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MINISTRY OF LABOUR AND EMPLOYMENT

NOTIFICATION

New Delhi-2, the 7th August 1962

S.O. 2603.—In pursuance of sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the National Industrial Tribunal, Bombay, in the industrial dispute referred to the said Tribunal by the Order of the Government of India, in the Ministry of Labour and Employment, No. S.O. 2384, dated the 22nd September, 1960.

BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL (BANK DISPUTES) AT BOMBAY

REFERENCE No. 3 OF 1960.

In the matter of the dispute between the Banking Companies specified in Schedule I to the Order No. S.O. 2384, dated the 22nd September 1960 of the Government of India in the Ministry of Labour and Employment

and

Their Workmen.

PRESENT:

The Honourable Shri Justice Kantilal T. Desai, Presiding Officer of the National Industrial Tribunal (Bank Disputes), Bombay. (Now Chief Justice of the High Court of Gujarat).

APPEARANCES.

As in Appendix B.

INDUSTRY: Banking. *Dated the 21st July, 1962.*

AWARD

CHAPTER I

INTRODUCTORY

1. By a Notification bearing No. S.O. 704, dated New Delhi, the 21st March 1960, the Central Government, in exercise of the powers conferred by section 7B of the Industrial Disputes Act, 1947, constituted a National Industrial Tribunal with headquarters at Bombay, and appointed me as the Presiding Officer of the Tribunal.

2. By an order bearing No. S.O. 2384, dated the 22nd September 1960, the Central Government being of opinion that an industrial dispute existed or was apprehended between the banking companies specified in Schedule I to the said order and their workmen, in respect of the matters specified in Schedule II thereto, and that the dispute involved a question of national importance and also was of such a nature that industrial establishments situated in more than one State were likely to be interested in, or affected by, such dispute, and being further of opinion that the dispute should be adjudicated by a National Tribunal, in exercise of the powers conferred by sub-section (1A) of section 10 of the Industrial Disputes Act, 1947, has referred the said dispute to this National Tribunal for adjudication. Schedule I to that order specifies the names of 73 banks. Schedule II to the said order specifies the following matters:—

> "*Bonus*—principles and conditions under which payable, qualification for eligibility and method of computation, after making provision for all matters for which provision is necessary by or under any of the Acts applicable to the banks or which are usually provided for by banks."

A copy of the said order will be found in Appendix A.

3. Requisite notices were served upon all the banking companies and their workmen, requiring the workmen to file their statements of claim on or before the 18th October 1960 and the banking companies to file their written statements to the statements of claim on or before the 7th November 1960 and fixing the hearing of the reference on the 14th November 1960.

4. On 17th October 1960, the All India Bank Employees Association filed an application for extention of time for filing its statement of claim by at least one month from 18th October 1960. On 24th October 1960, the time for filing the statement of claim was extended to the first week of November 1960 and thereafter further extended to 22nd November 1960.

5. In the month of December 1960, the All India Bank Employees Association filed a preliminary statement of claim bearing date 8th December 1960, disputing the validity of the provisions containing in the newly added section 34A of the Banking Companies Act, 1949 which had come into force from the 26th of August 1960 which provided as follows:—

> "(1) Notwithstanding anything contained in section 11 of the Industrial Disputes Act, 1947, or any other law for the time being in force, no banking company shall, in any proceedings under the said Act or in any appeal or other proceeding arising therefrom or connected therewith, be compelled by any authority before which such proceeding is pending to produce, or give inspection of, any of its books of account or other document or furnish or disclose any statement or information, when the banking company claims that such document, statement or information is of a confidential nature and that the production or inspection of such document or the furnishing or disclosure of such statement or information would involve disclosure of information relating to—
>
> (a) any reserves not shown as such in its published balance sheet, or
>
> (b) any particulars not shown therein in respect of provisions made for bad and doubtful debts and other usual or necessary provisions.
>
> (2) If, in any such proceeding in relation to any banking company other than the Reserve Bank of India, any question arises as to whether any amount out of the reserves or provisions referred to in sub-section (1) should be taken into account by the authority before which such proceeding is pending, the authority may, if it so thinks fit, refer the question to the Reserve Bank and the Reserve Bank shall, after taking into account principles of sound banking and all relevant circumstances concerning the banking company, furnish to the authority a certificate

stating that the authority shall not take into account any amount as such reserves of the banking company or may take them into account only to the extent of the amount specified by it in the certificate, and the certificate of the Reserve Bank on such question shall be final and shall not be called in question in any such proceeding."

By the preliminary statement of claim, the said Association pleaded that unless and until the issue of disclosure of secret reserves was decided no bonus formula could be worked out and it was difficult to place before the Tribunal any principles for determination of bonus in respect of banking companies. It was further pleaded that the amendment made as aforesaid virtually defeated the claim of any bonus to employees and debarred them from the advantage of judicial determination of the claim. The Association submitted that the constitutional validity of the said amendment should be determined as a preliminary issue. It pleaded that section 34A was *ultra vires* the Constitution of India, being in derogation of the fundamental rights set out in Part III of the Constitution of India, and in particular, Article 14 of the Constitution of India. The Association craved leave to put in its statement of claim on the merits of the reference after the preliminary issues were decided by the Tribunal.

6. The All India Bank Employees Federation filed a statement of claim, dated 8th December 1960, submitting that the reference was vague, that it was difficult to lay down any precise formula without looking at the actual profits of each bank for the years in question, that the reference savoured of discrimination between banks and banks and their respective employees inasmuch as the State Bank of India and its Subsidiaries were not included in the reference and under the amendment made in the Banking Companies Act, 1949, privilege had been given to banks to withhold important, relevant and material information required for the purposes of laying down the principles of bonus, that the profits shown in the balance-sheets and profit and loss accounts of banks did not show the true and complete picture of the working results of banks, that numerous deductions were made before the profits were shown in the balance-sheets and profit and loss accounts and that the full and complete picture relating to the profits of banks, including the secret reserves provided for in each year should first be disclosed. By this statement of claim, the All India Bank Employees Federation has also made its submissions on the merits of the matter referred to the Tribunal.

7. The All India Bank of Baroda Employees' Federation filed a preliminary statement of claim, dated 3rd December 1960, submitting that the order of reference was invalid and bad in law, that the matter referred to the Tribunal for adjudication was "only a matter appearing to be connected with or relevant to the main dispute relating to the fixation of the quantum of Bonus to be paid to the employees in respect of the years 1957 to 1959", that the order referring only connected or relevant matters without referring the main matter or dispute for adjudication was incomplete and therefore, bad in law, and that the Tribunal had no jurisdiction to decide the reference. A plea to a similar effect has been taken by the Indian Overseas Bank Employees' Union by its preliminary statement of claim, dated 3rd December 1960.

8. The Punjab National Bank Staff Association, Eastern Circle, Calcutta, filed a statement of claim, bearing date 13th October 1960, making its submissions on the merits of the matter referred to the Tribunal.

9. When these statements of claim were filed, there was pending before me an earlier reference, being Reference No. 1 of 1960. That reference related to various matters in dispute between the aforesaid 73 banking companies and 11 other banking companies and corporations and their workmen in connection with categorisation of banks and areas, scales of pay, dearness allowance, house rent and other allowances, provident fund, pension and gratuity and several other matters. In that reference also, a question had arisen regarding the constitutional validity of the aforesaid newly added section 34A of the Banking Companies Act, 1949. In that reference, the question was argued at considerable length. I passed an order in connection therewith on 31st October 1960, holding that the provisions of the aforesaid section were validly enacted and were not violative of any fundamental right as alleged. The said order appears as Appendix D to my award dated the 7th June 1962 in Reference No. 1 of 1960, published in the Gazette of India Extraordinary, Part II, section 3(ii), dated June 30, 1962 at page 1487, at page 1799. The matter was carried to the Supreme Court. The Supreme Court delivered its judgment in connection with the aforesaid matter in Civil Appeal No. 154 of 1961 and in Writ Petition Nos. 70, 80 and 82 of 1961 (All India Bank Employees Association and others *vs.* National Industrial Tribunal and others) on 28th August 1961,

upholding the constitutional validity of this newly enacted section 34A of the Banking Companies Act, 1949. The said decision is reported in (1961) II LLJ. at page 385. The aforesaid decisions were sufficient for the purpose of disposing of the preliminary point relating to the validity of section 34A of the Banking Companies Act, 1949, raised as aforesaid by the All India Bank Employees Association in its statement of claim, dated 8th December 1960.

10. The All India Bank Employees Association thereafter filed a further statement of claim on 5th November 1961 raising numerous further preliminary objections and also pleading on the merits of the matter referred to the Tribunal. On 26th December 1961, the Vadodra Rajya Bank Nokar Sangh filed a statement of claim adopting the statement of claim filed by the All India Bank Employees Federation on 8th December 1960. On the same day, the Indian Overseas Bank Employees' Union filed a statement of claim, adopting the statement of claim filed by the All India Bank Employees Federation on 8th December 1960.

11. On 8th June 1961, the Indian Banks Association on behalf of its 27 member banks filed a written statement in reply to the preliminary statement of claim filed by the All India Bank Employees Association, dated 8th December 1960, and to the statement of claim of the All India Bank Employees Federation, dated 8th December 1960. On 31st May 1961 the Bombay Exchange Banks Association on behalf of its 10 member banks filed a written statement in reply to the preliminary statement of claim filed by the All India Bank Employees Association, dated 8th December 1960 and the statement of claim filed by the All India Bank Employees Federation, dated 8th December 1960. On 11th August 1961 the Northern India Banks Association on behalf of its 6 member banks filed two written statements, one in reply to the preliminary statement of claim filed by the All India Bank Employees Association, dated 8th December 1960 and the other in reply to the statement of claim filed by the All India Bank Employees Federation, dated 8th December 1960. The Bank of Baroda Limited filed its written statement dated 23rd August 1961 in reply to the statement of claim dated 3rd December 1960 filed by the All India Bank of Baroda Employees' Federation. The Miraj State Bank Ltd., filed a written statement, dated 12th September 1961, in reply to the preliminary statement of claim filed by the All India Bank Employees Association, dated 8th December 1960 and the statement of claim filed by the All India Bank Employees Federation, dated 8th December 1960. The Indian Banks Association has filed a further written statement, dated 15th December 1961, in reply to the further statement of claim filed by the All India Bank Employees Association, dated 5th November 1961. The Bombay Exchange Banks Association has also filed a further written statement, dated 11th December 1961 in reply to the aforesaid further statement of claim of the All India Bank Employees Association. The Miraj State Bank Ltd., has filed a further written statement, dated 20th December 1961 in reply to the further statement of claim filed by the All India Bank Employees Association, dated 5th November 1961. The Bharatha Lakshmi Bank, by its communication, dated 9th November 1960, has made its submissions in connection with the matter referred to the Tribunal.

12. The hearing of this reference commenced on 26th December 1961 and was concluded on 8th January 1962. Thereafter the time of this Tribunal was mainly taken up in connection with the preparation of the award of this Tribunal in Reference No. 1 of 1960 which was signed on 7th June 1962.

CHAPTER II

PARTIES TO THE DISPUPTE

13. By the order of reference certain disputes relating to bonus between 73 banking companies and their workmen have been referred for adjudication to this Tribunal. Material changes have taken place affecting some of the aforesaid banks and their workmen which necessitate my not making an award concerning them and their workmen.

I. *Stoppage of banking business.*

14. (1) *Safe Bank Ltd.*—This bank is listed as bank No. 60 in schedule I to the order of reference. On 22nd June 1961, the Safe Bank Ltd., intimated to this Tribunal that on 31st January 1961, the Reserve Bank of India had sent a notice in writing to the bank informing the bank that licence to carry on banking business could not be granted to it under the proviso to section 22(2) of the Banking Companies Act, 1949, and that as per orders of the Reserve Bank it had stopped

banking business with effect from 6th February 1961. As the aforesaid bank has ceased to be a banking company within the meaning of section 2(bb) of the Industrial Disputes Act, 1947, no award is made in connection with the dispute between the said bank and its workmen.

15. (2) *Thomcos Bank Ltd.*—This bank is listed as bank No. 64 in schedule I to the order of reference. Some of the assets and liabilities of this bank have been transferred to the Bank of Madura Ltd., under an agreement of transfer, dated 12th September 1960, entered into between the Thomcos Bank Ltd., and the Bank of Madura Ltd. Under the terms of the said agreement it is provided that after the transfer of the assets and liabilities therein mentioned, the Thomcos Bank Ltd., would not carry on banking business except to the extent necessary for the realisation of its residuary and other assets and to convert the same into cash. By clause 13 of the said agreement it is provided that the Bank of Madura Ltd., would absorb in its service all the then members of the staff of the Thomcos Bank Ltd., on the same emoluments then obtaining in the Thomcos Bank Ltd., and that in case of any member of the staff was not willing to join the service of the Bank of Madura Ltd., the Thomcos Bank Ltd., would pay to such person compensation, if any, legally due to him on the termination of his service. In view of the fact that for all practical purposes the Thomcos Bank Ltd., has ceased to do banking business and to be a banking company and the services of a large number of its employees have been taken over by the Bank of Madura Limited, no award is made in connection with the dispute between the Thomcos Bank Ltd., and its employees in this reference.

II. *Amalgamation under section 45 of the Banking Companies Act, 1949.*

16. (3) *Jodhpur Commercial Bank Limited.*—This bank is listed as bank No. 37 in schedule I to the order of reference. This bank was under moratorium for a period of three months with effect from 6th July 1961. On 16th October 1961 this bank has been amalgamated with the Central Bank of India Limited, Bombay (hereinafter referred to as a 'transferee bank').

17. (4) *The New Citizen Bank of India Limited.*—This bank is listed as bank No. 51 in schedule I to the order of reference. This bank was under moratorium from 15th November 1960 to 28th April 1961. The bank has been amalgamated with the Bank of Baroda Limited (hereinafter referred to as a 'transferee bank') with effect from 29th April 1961.

18. (5) *The Travancore Forward Bank Limited.*—This bank is listed as bank No. 65 in schedule I to the order of reference. This bank was under moratorium from 18th December 1960 to 14th May 1961. This bank has been amalgamated with the State Bank of Travancore, Trivandrum (hereinafter referred to as a 'transferee bank') with effect from 15th May 1961.

19. (6) *The Bank of Nagpur Limited.*—This bank is listed as bank No. 9 in schedule I to the order of reference. This bank was under moratorium from 27th November 1960 to 26th March 1961. This bank has been amalgamated with the Bank of Maharashtra Limited (hereinafter referred to as a 'transferee bank') with effect from 27th March 1961.

20. (7) *The Indo-Commercial Bank Limited.*—This bank is listed as bank No. 34 in schedule I to the order of reference. This bank was under moratorium from 25th October 1960 to 24th March 1961. This bank has been amalgamated with the Punjab National Bank Limited, New Delhi (hereinafter referred to as a 'transferee bank') with effect from 25th March 1961.

21. (8) *The Rayalaseema Bank Limited.*—This bank is listed as bank No. 59 in schedule I to the order of reference. It was under moratorium from 14th May 1961 to 31st August 1961. This bank has been amalgamated with the Indian Bank Limited, Madras (hereinafter referred to as a 'transferee bank') with effect from 1st September 1961.

22. The aforesaid six banks have been amalgamated with other banks. Under the schemes of amalgamation, the workmen employed by the aforesaid six banks, would continue in service and would be deemed to have been appointed by the transferee banks at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately prior to the date of the respective orders of moratorium. There is a further provision to the effect that the transferee banks would pay or grant, not later than the expiry of the period of 3 years from the dates on which the schemes of amalgamation were respectively sanctioned by the Central Government to such employees the same remuneration

and the same terms and conditions of service as were applicable to the employees of the respective transferee banks of corresponding rank or status subject to certain qualifications

23. In view of the aforesaid provisions, no award is made in connection with the disputes between the aforesaid six banks which have been amalgamated and the employees of such banks.

III. *Merger.*

24. (9) *Lloyds Bank Limited.*—This bank is listed as bank No. 40 in schedule I to the order of reference. Since 1st January 1961 the business of this bank in India has been transferred to the National and Grindlays Bank Limited and the services of all the employees employed by this bank in India have been taken over by the National and Grindlays Bank Limited. No award is made in connection with the dispute between the Lloyds Bank Limited and its employees.

IV. *Transfer of service.*

25. (10) *The Trivandrum Permanent Bank Limited.*—This bank is listed as bank No. 66 in schedule I to the order of reference. As a result of an agreement arrived at between the Trivandrum Permanent Bank Limited and the Canara Bank Limited, selective assets and liabilities of the former bank have been taken over by the latter bank. The All Kerala Bank Employees Union representing the workmen of the Trivandrum Permanent Bank Limited raised before the Conciliation Officer (Central), Ernakulam, a dispute regarding the absorption of the workmen of the said bank in the Canara Bank Limited. A settlement was arrived at in the course of the conciliation proceedings on 16th May 1961 whereunder it was agreed that all the employees of the Trivandrum Permanent Bank Limited other than those who were over 60 years of age on the date of the taking over of the assets and liabilities of the Trivandrum Permanent Bank Limited by the Canara Bank Limited, should continue in service and be deemed to have been appointed by the Canara Bank Limited at the same remuneration and on the same conditions of service as were applicable to such employees immediately before the date of taking over. Under the terms of the said settlement it was agreed that the Canara Bank Limited would, on the expiry of a period not later than 3 years from the date of the taking over, pay or grant to the employees of the Trivandrum Permanent Bank Limited appointed in the Canara Bank Limited the same remuneration and the same terms and conditions of service as were applicable to the employees of the corresponding rank and status of the Canara Bank Limited, subject to the qualifications and experience of the said employees of the Trivandrum Permanent Bank Limited being the same as or equivalent to those of the said employees of the Canara Bank Limited. A joint application was made by the Canara Bank Limited, the Trivandrum Permanent Bank Limited and the All Kerala Employees' Union on behalf of the workmen of the Trivandrum Permanent Bank Limited in Reference No. 1 of 1960 that an award should be made by this Tribunal in terms of the settlement arrived at in the course of the conciliation proceedings on 16th May 1961 as aforesaid. On 7th August 1961, I have made an award in Reference No. 1 of 1960 in terms of the settlement arrived at as aforesaid. In view of the fact that the services of most of the employees of Trivandrum Permanent Bank Ltd. have been taken over by the Canara Bank Ltd., no award is made in connection with the dispute between the Trivandrum Permanent Bank Limited and its workmen in this reference.

V. *Other grounds.*

26. (11) *Salem Bank Limited, Salem.*—This bank is listed as bank No. 61 in schedule I to the order of reference. A settlement was arrived at between the workmen employed by the Salem Bank Limited and the Salem Bank Limited, in connection with all the disputes covered by Reference No. 1 of 1960 and also in connection with this reference. An application was made before me on 3rd December 1960 in Reference No. 1 of 1960, signed on behalf of the bank and by two representatives of the employees of the bank, in which it was stated that all the employees of the bank, without a single exception, and the bank had entered into the aforesaid settlement and had signed the same. They prayed for an award in terms of the settlement. A copy of the said settlement signed as aforesaid was produced before me in the said reference. After due notice to all the parties, I recorded the said settlement arrived at between the Salem Bank Limited and its workmen in Reference No. 1 of 1960 and made an award in terms thereof, to the

extent that it related to the said Reference No. 1 of 1960, on 18th January 1961. The said award is published in the Gazette of India, Part II, section 3(ii), dated the 4th February 1961 at page 357. One of the terms of the said statement, which concerns the present reference, relating to bonus provides as under:—"Left to the discretion of the bank to continue the giving of additional remuneration provided the profits admit." In view of the aforesaid settlement arrived at between the Salem Bank Limited and its workmen, which has been recorded in Reference No. 1 of 1960, I do not consider it proper to make any award in the present reference in connection with the Salem Bank Limited and its workmen. The award made by me in this reference will not apply to the said bank and its workmen.

27. The present award will only apply to the banks referred to in the order of reference other than the aforesaid eleven banks and to the workmen of the banks other than those of the aforesaid eleven banks.

CHAPTER III

BACKGROUND

28. During the period of the first world war, bonuses were being paid to workmen in various industries. In July 1923, the Bombay Millowners' Association declared that the textile industry was suffering a set-back and was considering the question of stopping the practice of annual bonuses to the workers. In the month of January 1924, there was a general strike of workers employed in the textile industry. On 22nd February 1924, the Government of Bombay appointed a Committee known as the Bonus Dispute Committee under the chairmanship of the Hon'ble Sir Norman Macleod, the then Chief Justice of the High Court of Bombay, to enquire into the question of the textile workers' claim for bonus. The terms of reference of this Committee *inter alia* were to consider the nature and basis of the bonus which had been granted to the employees in the cotton textile mills of Bombay since 1919 and to declare whether the employees had established any enforceable claim, customary, legal or equitable. The Committee expressed the opinion that the workers had no legal right to claim bonus. The Committee came to the conclusion that the mill workers had not established any enforceable claim, customary, legal or equitable, to the payment annually of a bonus which could be upheld in a Court of Law. The Committee, however, observed that it was a question of bargaining between the workers and the employers in which consideration might well be given to principles of equity and that it was not a question of determining what was the contract between the parties. The question of bonus assumed great importance after the outbreak of the second world war. Shri Justice Chagla, as he then was, in his award in connection with the dispute between the General Motors Workers' Union *vs.* General Motors (India) Limited, Bombay, reported in Bombay Government Gazette, Part I—May 28, 1942, page 1899, observes as follows:—

> It is true that it cannot be enforced in a Court of Law because it is not a possible by the contribution that both capital and labour make in any particular industry, and I think it is also conceded that labour has a right to share in increased profits that are made in any particular period."

Some of the adjudicators characterised bonus as a gift, a sort of bakshis or pour-boire. A reference in this connection may be made to the decision in Poona Electric Supply Co. Ltd. *vs.* Its Employees, published in Bombay Labour Gazette, February 1945 at page 361. In the year 1945, the Industrial Court of Bombay, in a dispute between the Textile Labour Association, Ahmedabad, and the Ahmedabad Millowners' Association, held that bonus was in the nature of a reward and observed as follows:—

> "A reward is anything given or paid in return for anything done as kindness, service, etc. It includes additional gratuitous payment for work already done, over and above a payment according to agreement. * * * * Such additional payment is not a pure gift because a gift may have no relation to any work done or to be done by the donee, but it is a reward inasmuch as it is asked for as an extra payment for work actually done. It is true that it cannot be enforced in a Court of Law because it is not a legal right. But it does not follow that it cannot become a subject matter of an industrial dispute between the employers and the workers. If the latter demand such payment as a reward in the form of a bonus."
>
> (Bombay Labour Gazette, 1945-46 p. 124).

29. The Industrial Court, Bombay, in the year 1947 in the case of Millowners' Association, Bombay *vs.* Employees in the Cotton Textile Mills in Bombay, reported in 1946-47 Industrial Court Reporter, page 386, at pages 390 and 391 observed as follows:—

> "The justification for such demands as 'industrial matter' arises especially when wages fall short of the living wage standard and the industry makes huge profits part of which are due to the contribution which the workers make in increasing production. The demand for a bonus is therefore an industrial claim when either or both these conditions are satisfied. * * * It is to be remembered that 'adequate wages and dearness allowance', if any, for increased cost of living are a first charge on the industry, but the workers may reasonably ask for a bonus when there are enhanced profits, when dividends are paid out after providing for taxation and depreciation—especially when their wages are below the living wage standard."

30. In the award made by the Industrial Court, Bombay, in Millowners' Association, Bombay and others *vs.* Their Employees, reported in Industrial Court Reporter (Supp.), 1949, at page 168, relating to bonus in the cotton textile industry in Bombay for the year 1948, it has been stated by the said Court in connection with the demand of bonus at pages 173 and 174 as under:—

> "Such a demand derives its strength, where the living wage standard has not been reached, from a feeling of deficiency in the means to attain the necessary standard of living. Therefore bonus in such circumstances no doubt serves as a temporary satisfaction, wholly or in part, of his need. Theoratically, adequate wages and dearness allowance should be the first charge on an industry. * * * Labour as well as the working capital employed in the industry both contribute to the profit made and both are, therefore, entitled to claim a legitimate return out of the profit; and such legitimate return, so far as labour is concerned, must be based on the living wage standard. It is, however, to be remembered that a claim to bonus might be admissible even if the living wage standard were completely attained. It may, therefore, be stated that so long as the living wage standard has not been attained, the bonus partakes primarily of the character of the satisfaction, often partial and temporary, of the deficiency in the legitimate income of the average worker in an industry, and that once such income has been attained it would also partake the character of profit-sharing. Owing to this dual character of bonus it would be a mistake to regard a demand for bonus as a demand for profit-sharing pure and simple. Even if it be held, as the Committee on Profit Sharing have held, that profit sharing on a fifty-fifty basis would be equitable, it would be proper, in our opinion, when the living wage standard has not been reached, for labour to demand even a greater share after the gross profits have been reduced by depreciation, reasonable reserves and dividend and suitable provision for taxation."

31. There was a dispute in connection with bonus payable to workers employed in the textile industry in Bombay for the year 1949. The Industrial Court at Bombay gave its award in connection with that dispute. An appeal was filed from the decision of the Industrial Court before the Labour Appellate Tribunal of India by The Millowners' Association, Bombay. The respondents in that appeal were The Rashtriya Mill Mazdoor Sangh, Bombay and another. The decision of the Labour Appellate Tribunal given in that case has become well-known as the decision laying down the Full Bench Bonus Formula. All the five members of the Labour Appellate Tribunal sat on the bench. The decision given by the Labour Appellate Tribunal is reported in (1950) II LLJ. at page 1247. In paragraph 18 of the decision at page 1253, the Labour Appellate Tribunal has observed as follows:—

> "Both parties have suggested that it is desirable that definite principles should be formulated for the purpose of determining the questions relating to bonus. Without doubt principles are necessary in order to serve as guide for future years, as that is likely to lead to a uniform practice and to promote harmonious relations between Capital and Labour and ensure industrial peace, things which are very desirable and which would tend to increase production, which the welfare of the nation urgently requires.....".

In paragraph 20, it has stated as under:—

> "Now, bonus is cash payment made to employees in addition to wages. It cannot any longer be regarded as an ex-gratia payment, for it has been recognised that a claim for bonus, if resisted, gives rise to an industrial

dispute, which has to be settled by a duly constituted Industrial Court or Tribunal.

'It differs from wages, in that it does not rest on contract, but still payments for bonus are made, because legally due, but which the parties do not contemplate to continue indefinitely.' [per Lord Birkenhead in Sutton *vs.* Attorney General (1923) 39 T.L.R. 294].

Where the goal of living wages has been attained bonus, like profit sharing, would represent more as the cash incentive to greater efficiency and production. We cannot, therefore, accept the broad contention that a claim to bonus is not admissible where wages have (as in the case before us) been standardised at a figure lower than what is said to be the living wage. Where the industry has capacity to pay, and has been so stabilised that its capacity to pay may be counted upon continuously, payment of 'living wage' is desirable; but where the industry has not that capacity or its capacity varies or is expected to vary from year to year, so that the industry cannot afford to pay 'living wages', bonus must be looked upon as the temporary satisfaction, wholly or in part, of the needs of the employee.....".

In paragraph 21 and in subsequent paragraphs, the Labour Appellate Tribunal has observed as under:—

"21. We will now consider what should be the general principles governing bonus. As both capital and labour contribute to the earnings of the industrial concern, it is fair that labour should derive some benefit, if there is a surplus after meeting prior or necessary charges."

"22. The gross profits are arrived at after payment of wages and dearness allowances to the employees, and other items of expenditure which are not necessary for our present purposes to enumerate in detail. As investment necessarily implies the legitimate expectation of the investor to secure recurring returns on the money invested by him in the industrial undertaking, it is essential that the plant and machinery should be kept continuously in good working order for the purpose of ensuring that return, and such maintenance of plant and machinery would also be to the advantage of labour, for the better the machinery the larger the earnings, and the better the chance of securing a good bonus. The first charge on the gross profits should, therefore, be the amount of money that would be necessary for rehabilitation, replacement and modernisation of the machinery. As depreciation allowed by the income-tax authorities is only a percentage of the written down value, the fund set apart yearly for depreciation and designated under that head would not be sufficient for these purposes. An extra amount would have to be annually set apart under the heading of "reserves" to make up that deficit."

In dealing with the question of return on the reserves employed as working capital, the Labour Appellate Tribunal has observed as follows:—

"The reserves which are carried over from year to year in law belong to the company, and in our view the company is entitled to some return for the money employed as working capital. The company is entitled to deal with this return as it chooses, and neither the shareholders individually nor the employees can *as of right claim any direct benefit* accruing out of the employed capital; therefore this amount has to be credited to the company. There cannot be any doubt that the employment of the reserves as working capital obviates the borrowing of money *pro tanto* from outside sources for the same purpose, and may be at higher rates of interest. The payment of higher interest would necessarily reduce the gross profits; to that extent the employment of reserves as working capital would be beneficial to the employees."

"The paid-up capital, however, runs a double risk, *viz.*, (1) normal trade risks, and (2) risk incidental to trade cycles; whereas in the case of the reserves employed as working capital which is more liquid than fixed capital the incidence of risk to which it is subject is rather small. So the fair return on reserves employed as working capital must necessarily be much lower than the fair return on paid-up capital.....".

"The claim of the employees for bonus would only arise if there should be a residue after making provision for (a) prior charges, and (b) a fair return on paid-up capital and on reserves employed as working capital.....".

In dealing with the question of distribution of surplus and the amount of bonus payable thereout, the Labour Appellate Tribunal in paragraph 37 has observed as follows:—

> "... ....The answer to this issue is not easy, for we have to consider in this context the needs of the employees, the claims of the share-holders, and the requirements of the industry. The subject is not readily responsive to any rigid principle or precise formula, and so far we have been unable to discover a general formula. This does not, however, mean that the answer to this issue is in any way fortuitous; nor are we in any doubt as to the considerations which must prevail in deciding what the amount of bonus should be. Essentially the question of bonus must depend upon the relative prosperity of the concern during the year under review, and that prosperity is probably best reflected in the amount of the residuary surplus; the needs of labour at existing wages is also a consideration of importance; but we should make it plain that these are not necessarily the only considerations; for instance, no scheme of allocation of bonus could be complete if the amount out of which a bonus is to be paid is unrelated to employees' efforts; and even when we have mentioned all these considerations we must not be deemed to have exhausted the subject. Our approach to this problem is motivated by the requirement that we should ensure and achieve industrial peace which is essential for the development and expansion of industry. This can be achieved by having a contented labour force on the one hand, and on the other hand an investing public who would be attracted to the industry by a steady and progressive return on capital which the industry may be able to offer. It goes without saying that if the residuary surplus is appreciably larger in any particular year it should be possible for the company to give a more liberal bonus to the employees."

The Labour Appellate Tribunal did not accede to the view that in the matter of payment of bonus a unit in an industry in a particular region should be ordered to pay bonus on the ground that some other units in the industry are able to pay bonus by reason of having surplus. It further directed a deletion of two of the conditions imposed by the Industrial Court, *viz.*, that no bonus was to be paid to employees who worked less than 32 days and that no bonus would be payable to employees who had been dismissed for misconduct.

32. Before the constitution of the Labour Appellate Tribunal, disputes had arisen in the banking industry in connection with bonus. A dispute regarding bonus for the first time came up before the Industrial Court at Bombay consisting of Sir Harsidhbhai *vs.* Divatia in the year 1946 in Reference No. 6 of 1946 and Reference No. 10 of 1947, between certain banking companies and their employees. A demand was made by the employees that after allowing six per cent. dividend to the share-holders, fifty per cent. of the remaining net profit should be divided among the employees. It was further claimed that under no circumstances should the yearly bonus be less than two months' salary which should be calculated on the basis of each employee's respective salary plus dearness allowance for the last month of the preceding accounting year of the bank. Shri Shantilal H. Shah, who appeared for the employees in that case contended before the Industrial Court that the profits of a bank were earned due to the joint endeavour of capital and labour and therefore, bonus must be a first charge on the profits. He suggested that a bank need not pay any bonus if it paid to its shareholders a dividend of less than four per cent., but that if the dividend was from four to six per cent., a bonus of one month's salary should be granted, that if it was from six to ten per cent., then two months' bonus should be granted and that if it was over ten per cent., then three months' bonus should be granted. This suggestion was opposed by the banks on the ground that it would amount to participation in the profits of the company and that under section 277 HH of the Indian Companies Act, 1913 the bonus in the form of such participation in the profits was not legally allowed. The Industrial Court did not accede to the demand of the employees for laying down a general principle concerning all bonuses in future and the reference was confined to bonus for the past accounting year of the banks concerned which in most cases, was the calendar year 1946. The decision is reported in 1946-47 Industrial Court Reporter, page 335.

33. On 13th June 1949 the Government of India in the Ministry of Labour, in exercise of the powers conferred by section 7 of the Industrial Disputes Act, 1947, constituted an Industrial Tribunal (hereinafter for brevity's sake referred to as the Sen Tribunal) consisting of Shri K. C. Sen, President, Industrial Court, Bombay and a retired Judge of the High Court of Judicature at Bombay, as Chairman and

two other members who were also retired Judges of High Courts, and referred certain disputes between 205 banking companies and their workmen for adjudication by the said Tribunal. Among the disputes so referred was the dispute relating to "bonus, including the qualifications for eligibility and method of payment." In interpreting the said term of reference, the Sen Tribunal observed that the kind of disputes regarding bonus that had been referred to it were disputes of a general nature, as distinct from disputes relating to quantum of bonus for particular years in respect of particular banks. In dealing with the question of bonus, the Sen Tribunal referred to the provisions of section 10(1)(b)(ii) of the Banking Companies Act, 1949, as it then stood, which provided as under:—

> "No banking company * * * * shall employ any person * * * whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company."

The Sen Tribunal thereafter observed that it did not propose to lay down any formula making bonus a share in the profits. It observed that "a company has sometimes to declare a particular dividend owing to considerations not strictly related to the profits alone; for instance, a sudden declaration that no dividend can be paid may have serious consequences on the credit of such a delicate organisation as a bank; or for certain reasons the shareholders' hopes might have been pitched high (*e.g.*, by a return of excess profit tax or some other windfall) which it may not be expedient to disappoint; or it may be necessary to set aside a substantial part of large profits made in the year, in the form of a reserve, for particular purposes." It quoted the following passage from "Modern Banking" (Edition 1941) by Mr. R. S. Sayers:—

> "the central bank must, therefore, always demonstrate that it is not incurring losses, even if it has incurred losses. Accordingly it must never pass a dividend, and there is a strong case against ever reducing the dividend. If proper performance of its functions leads to its incurring losses, either it must cover them out of secret reserves or it must be helped by the Government."

The Sen Tribunal thereafter proceeded to state that it would not be proper to hold that dividend was necessarily a function (to use a mathematical term) of a bank's profits, although ordinarily the rule must be the greater the profits the greater the dividend. It was of opinion that if it linked bonus to the amount of dividend, that would not necessarily amount to giving an employee remuneration which took the form of a share in the profits of the company. It considered that linking of dividends and bonus did not appear to be illegitimate. It further observed that in the case of banks, the major part of the working funds were provided not by the paid-up capital but by the deposits. It further stated that in the case of banks only a small part of their establishment was concerned with matters of policy and intelligent use of the banks' resources which were primarily responsible for their profits. It directed that bonus should be paid to the employees on the following scale:

> Upto 4 per cent. dividend—Nil.
>
> For every increase of ½ per cent. in the dividend over 4 per cent.—1/6 month's pay.

The scale was to apply to employees who had worked throughout the year, authorised holidays and leave on full pay counting as days of work for this purpose. In the case of others, the amount indicated above was to be multiplied by the following co-efficient: total number of days on which the employee has worked plus authorised holidays and leave on full pay divided by total number of working days in the year.

34. The award of the Sen Tribunal was given on 31st July 1950 before the decision of the Full Bench of the Labour Appellate Tribunal was given. Some of the banks which were parties to the said dispute being dissatisfied with the award, applied to the Supreme Court for special leave to appeal against the said award. The said leave was granted by the Supreme Court. Pending the hearing of the appeal, the Supreme Court stayed the operation of the award with regard *inter alia* to the directions contained therein regarding bonus. On 9th April 1951, the Supreme Court declared the Sen Award as being void and inoperative for technical reasons relating to the constitution of that Tribunal. The Supreme Court did not deal with any question relating to the merits of any matter dealt with in the award.

35. By a notification dated 5th January 1952, in exercise of the powers conferred by section 7 of the Industrial Disputes Act, 1947, the Central Government constituted an Industrial Tribunal consisting of Shri S. Panchapagesa Sastry, a retired

Judge of the High Court of Judicature at Madras, as chairman and Shri M. L. Tannan and Shri V. L. D'Souza, as members. The said Tribunal is hereinafter referred to as the Sastry Tribunal. On the same day, in exercise of the powers conferred by section 10 of the said Act, the Central Government referred to the Sastry Tribunal for adjudication disputes concerning 129 banks and their workmen. Among the disputes so referred was one relating to "bonus—including the qualifications for eligibility and method of payment". The Sastry Tribunal, in dealing with the term of reference relating to bonus, observed that the only question for consideration was "whether what may be called a bonus scheme for the future years can and should be devised and whether it should be made to apply retrospectively even to all banks and for all years". On behalf of the banks it was contended before the Sastry Tribunal that a demand for a bonus scheme in relation to banking companies could not be an industrial dispute which could be referred for adjudication. The Sastry Tribunal negatived that contention. The Sastry Tribunal in the course of its award has observed that it was well-settled in industrial law that the payment of bonus was not a mere *ex-gratia* payment at the sole discretion of the employer but that a claim for bonus might lead to an industrial dispute to be decided by an award of a competent tribunal binding on the employers. The Sastry Tribunal has further observed that where the award laid down a general formula for a whole industry or separate units thereof prescribing how much should be awarded by way of bonus from the profits of future years, it was incorporating an enforceable term in the contract of employment between the workmen and the bank. It observed that the general rule would really be adding a new term to the contract of service. The amount of bonus which was given was really a part of the remuneration for the services done because it was then admitted that bonus was being given to cover in part at least the gap between what a living wage should be and what the actual wage was in a particular case. It took the view that such a rule or a formula imposed by an award might offend against the terms of the Banking Companies Act, 1949 and it would not be open to the tribunal to lay down a scheme in those terms.

36. Dealing with the suggested formula of linking bonus to dividend, the Sastry Tribunal stated that it was opposed by a large majority of the workmen though a few supported it, but only as a last resort, the objection on behalf of the workmen being that not infrequently dividends were not declared even though enough profits had been earned to justify payment of dividend as well as bonus to workmen. The Sastry Tribunal thereafter proceeds to observe as follows:—

> "Moreover there are inherent defects in adopting such a formula some of which are the absence of a ceiling (which perhaps may be rectified), the difficulty of dividends being sometimes declared tax-free and sometimes subject to tax, the difficulty resulting from different rates of dividends for different kinds of shares, the issue of bonus shares, the payment of cash bonus instead of fixed dividends."

The Sastry Tribunal also referred to a decision given by the Labour Appellate Tribunal in the case of Trichinopoly Mills Ltd. and National Cotton Mills Workers' Union, reported in (1952) 2 LLJ. page 608, where the Tribunal had stated that it was not in favour of linking bonus to dividend paid to the shareholders, "since the employer may appropriate a large portion of the profits to reserves and dividend equalisation fund so as substantially to reduce the amount available for payment of dividend to shareholders". The Sastry Tribunal was against making payment of bonus dependent upon the dividends paid to shareholders.

37. In dealing with the demand for payment of bonus at the rate of 2, 3 and 4 months' basic pay according as the working capital of the bank was below Rs. 15 crores, between Rs. 15 and Rs. 40 crores and over Rs. 40 crores respectively, the Sastry Tribunal observed that it was difficult to support the formula on principle.

38. The Sastry Tribunal in paragraph 353 of its award, has observed that bonus as was then laid down, should come only from profits of any particular year, that it could not be made a part of the fixed costs of establishment irrespective of profits being earned or not, that it could not become part of the salary or an integral part of the fixed wage structure, that bonus was really contingent on profits being earned and that it must, therefore, primarily bear some relation to ascertained profits of any particular year. It further observed that to lay down a rule upon the basis of assumed profits which the units of industry were expected to make in the normal course could not therefore be right and that there could not be a generalisation with reference to the rate of profits which the various component units of the industry could be assumed to earn in the normal course.

39. In dealing with the Full Bench formula, the Sastry Tribunal observed as follows:—

"It is not however possible to adopt it for the banking industry which differs from it (the textile industry) in many respects. In the textile industry, bonus is awarded on the profits of the industry as a whole excluding units which have sustained losses. Here it is admitted that bonus can only be with reference to each individual bank and not on the whole industry as such. Even apart from that banking requires special safeguards for the creation of reserves for various purposes and for the maintenance of confidence in the investing public."

The Chairman of the Tribunal took the view that section 10 of the Banking Companies Act, 1949, as it then stood, did not prohibit a term of employment relating to bonus being imposed by courts and tribunals over and above what the parties stipulate as part of the contract between them. In the view of the Tribunal, the matter was not however free from doubt. The Sastry Tribunal did not give any binding award in connection with the dispute relating to bonus, but merely commended a scheme which it had formulated for the earnest consideration of both the parties before it, *viz.* the banking companies and their workmen. It also recommended to the Government that the alleged legal difficulty by reason of section 10 of the Banking Companies Act, 1949, may be removed by suitable legislation, making it clear that the payment of bonus to staff did not fall within the scope of section 10 of the Banking Companies Act, 1949.

40. The scheme recommended by the Sastry Tribunal was as follows:—

"..... bonus should come only out of what may be termed as "available surplus" of the profits after providing for certain prior charges which should be recognised as paramount claims. Prior charges to be so recognised are—

(1) The amount that should be set statutorily apart for reserves under Section 17 of the Banking Companies Act, 1949.

(2) Reasonable amounts that should be set apart by way of additional reserves and in accordance with sound banking principles for meeting such contingencies, as depreciation of securities, reserves for bad and doubtful debts, appropriations towards gratuity or pension fund and some amounts to carry over for next year, etc.

(3) Reasonable dividends on paid-up capital and return on reserve funds.

(4) Amount required for taxes (Tax on what is to be paid as bonus is to be added back in reconstructing the balance sheet).

If any of these items have been provided either wholly or partly before net profits are ascertained these items should not be deducted once again. The balance remaining after providing for the aforesaid amounts will constitute "available surplus" in which both capital and labour should share. These are the general principles to be kept in view."

"As regards a reasonable return for capital we think 6 per cent. should be allowed on paid-up capital as well as on reserves. In the case of the textile industry the full bench decision provides for a smaller return on reserves. We think in the case of the banking industry no distinction should be made for the purposes of return between paid-up capital and reserves. * * * * *"

"Lastly, the provision for reserves other than statutory reserves and taxation need not, in our opinion, exceed 30 per cent. of the net profits. It is in our opinion a safe estimate sufficient to safeguard the bank's interests. We think that it is desirable to lay down a definite percentage of the available surplus to be paid as bonus. We have considered the question whether the said percentage should vary according to the size and resources of the bank. In the case of the workmen of small banks the need for covering the gap between living wage and the salary that is fixed is greater than in the case of workmen of the bigger banks. This consideration requires a higher percentage in the case of the smaller banks. The smaller banks, however, unlike many of the bigger banks have to contribute for a long time from their profits towards building up statutory reserves as in their case reserves have not yet reached the paid-up capital. In the light of these considerations we think that fift-

per cent. of the "available surplus" in the case of banks belonging to 'A' and 'B' groups and sixty per cent. of the "available surplus" in the case of banks belonging to 'C' and 'D' groups may well be laid down as the fund available for bonus distribution. .....".

41. Dealing with the question whether claims both of workmen and officers for bonus should rank *pari passu*, or whether the workmen should have either a prior claim or a claim to a higher amount than officers, the Sastry Tribunal observed that in the case of workmen bonus was really intended to cover partly at least the gap between the living wage and the actual wage, and in the case of officers, it was more an incentive for greater efficiency. It, however, observed that profits depended to a large extent upon the exercise of the intelligence and capacity and brain power of the officer staff and concluded as under:—

"In the matter of bonus, therefore, we do not think a difference can be made between them as each group has a special argument in its favour except perhaps as regards the fixing of a ceiling limit for bonus."

42. There was an appeal filed from the decision given by the Sastry Tribunal before the Labour Appellate Tribunal. The Labour Appellate Tribunal gave its decision on 28th April 1954. It took a different view of the scope of the terms of reference relating to bonus. It also took the view that section 10 was no bar to a claim for bonus made by the employees and stated in paragraph 330 of its decision as follows:—

"..... the claims to bonus made for the relevant years have not yet been adjudicated upon, and that the terms of the Reference have not been exhausted. The *ad hoc* tribunal to which this Reference was made is no longer in existence and some other tribunal will have to decide what bonus if any is payable by the banks to its employees for the relevant years."

As regards the guiding principles for the ascertainment of bonus set out by the Sastry Tribunal, the Labour Appellate Tribunal observed that the same could hardly be called a scheme. It stated that the Full Bench formula contained principles which were applicable to all industries and businesses subject to such modifications as might be necessitated by special differences and that those essential principles were of general application and should be applied *mutatis mutandis* to the case of banks.

43. There were seven appeals filed before the Supreme Court against the decision of the Labour Appellate Tribunal after obtaining special leave to appeal therefrom. The appeals were consolidated. Questions which arose in those appeals were the following:—

"(1) What is the scope of item 5 of schedule II of the notification dated January 5, 1952, the item being expressed in the following words—"Bonus, including the qualifications for eligibility and method of payment";

(2) does s. 10 of the Banking Companies Act, 1949 (prior to its amendment by Act 95 of 1956) prohibit the grant of bonus to Bank employees;

(3) whether an industrial tribunal is entitled in law to compel Banks to disclose "secret reserves" and "other necessary provisions" made by them, for the purpose of adjudication;

(4) whether the Full Bench formula laid down by the Labour Appellate Tribunal in Mill Owners' Association, Bombay *vs.* Rashtriya Mill Mazdoor Sangh, Bombay for the payment of bonus to employees in the textile industry is applicable to Banks."

The judgment of the Supreme Court in connection with those appeals is reported in (1960) 1 S.C.R. page 200 (The Central Bank of India *vs.* Their Workmen and the parties in connected appeals). The Supreme Court took the view that item 5 of Schedule II related to the dispute of a general nature regarding bonus which did not include a demand for bonus for particular years in respect of particular banks and held that the Labour Appellate Tribunal was wrong in its conclusion that the reference had not been worked out and that individual claims for bonus in respect of particular banks must be determined by another tribunal on the basis of the reference made in the year 1952.

44. In dealing with the provisions contained in section 10 of the Banking Companies Act, 1949, prior to its amendment in the year 1956 and the words "no banking company shall employ ** ** ** any person whose remuneration or part

of whose remuneration takes the form of ** ** ** a share in the profits of the company", the Supreme Court observed that the express provisions of section 10 must override any other law for the time being in force so far as banking companies were concerned and that the word "remuneration" had been used in the widest sense and in that sense it undoubtedly included bonus. Dealing with the words "takes the form of a share in the profits of the company" the Supreme Court has at page 225 observed as under:—

"..... The conception of industrial bonus (that is, profit bonus claimed by employees and granted amicably, through conciliation or as a result of an industrial award) has had a chequered development. In some of the earlier Bombay decisions of Industrial Adjudicators, it was held that the grant of bonus was entirely a matter of grace and not of right; some decisions characterised bonus as a gift, a sort of *bakshis* or pour-boire (see D. G. Damle's Labour Adjudications in India, p. 408). By 1948, however, the conception had crystallised, and it was judicially recognised that the claim of profit bonus could not any longer be regarded as an *ex gratia* payment. In Millowners' Association, Bombay *vs.* Rashtriya Mill Mazdoor Sangh, Bombay the Full Bench of the Labour Appellate Tribunal evolved the formula for determining the quantum of bonus, and the general principles governing the claim of bonus were also laid down. These are: (1) as both capital and labour contribute to the earnings of the industrial concern, it is fair that labour should derive some benefit, if there is a surplus after meeting prior or necessary charges; (2) the claim of bonus would only arise if there should be a residue after making provision for (a) prior charges and (b) a fair return on paid-up capital and on reserves employed as working capital; and (3) bonus is a temporary satisfaction, wholly or in part, of the needs of the employee where the capacity of the industry varies or is expected to vary from year to year, so that the industry cannot afford to pay 'living wages'. The Labour Appellate Tribunal recognised that where the goal of living wages had been attained, bonus like profit sharing in the technical, narrow sense would represent more the cash incentive to greater efficiency and production. The conception of the living wage itself is a growing conception, and the goal has been reached in very few industries, if any, in this country. The general principles laid down by the aforesaid Full Bench decision of the Labour Appellate Tribunal were generally approved by this Court in Muir Mills Co. Ltd. *vs.* Suti Mills Mazdoor Union, Kanpur, and have been fully considered again and approved in Civil Appeals Nos. 459 and 460 of 1957 (Associated Cements) in which judgment was delivered on May 5, 1959.

We have to consider the expression 'takes the form of a share in the profits of the company' in the context of the meaning of the word 'bonus' as explained above. It is necessary to state that we are not considering here the question of production bonus or Puja bonus, which may not necessarily come out of profits and these stand on a different footing. There can be now no doubt, however, that profit bonus, in the industrial sense in which we now understand it, is a share in the profits of the company; it is labour's share of the contribution which it has made in the earning of the profits. The two grounds on which it has been contended that bonus is *not* a share in the profits are (1) that it is not a fixed or certain percentage of the available surplus of profits and (2) it partakes of the nature of a contingent, supplementary wage. These two grounds weighed considerably with the majority of members of the Labour Appellate Tribunal who expressed the view that s. 10 of the Banking Act did not stand in the way of granting bonus to bank employees, because bonus according to them was not a share in the profits of the company. We do not think that either of those two grounds is valid. The first ground arises out of a confusion between the expression 'takes the form of a share in profits' and the expression 'profit sharing' used in a narrow, technical sense. It is undoubtedly true that the bonus formula does not lay down any fixed percentage which should go to labour out of the available surplus. The share of labour will depend on a number of circumstances: but once the amount which should go to labour has been determined, it is easy enough to calculate what proportion it bears to the whole amount of available surplus of profits. There is thus no difficulty in identifying bonus as a share in the profits of the company. It is true that the International Congress on Profit-sharing held in Paris in 1889 adopted the definition of 'profit-sharing' in the technical, narrow

sense. That definition said that profit-sharing was "an agreement (formal or informal) freely entered into by which the employees receive a share, *fixed in advance*, of the profits" (see Encyclopaedia of the Social Sciences, Seligman and Johnson, Vol. XII, p. 487). But that is not the sense in which bonus has been understood in our industrial law, and it is worthy of note that s. 10 of the Banking Act does not use the technical expression 'profit-sharing' but the more general expression 'takes the form of a share in the profits, etc.'. We are unable to hold that this general expression has a technical meaning in the sense that the share in profits must be *fixed in advance*, as in technical profit-sharing; such a meaning would, without sufficient reason, exclude from its purview schemes under which the workers are granted regularly a share in the net profits of industry, but in which the share to be distributed among the workers is not fixed in advance but is decided from time to time on *ad hoc* basis by an independent authority such as an industrial court or tribunal.

The second ground also appears to us to be equally untenable. Bonus in the industrial sense as understood in our country does come out of the available surplus of profits, and when paid, it fills the gap, wholly or in part, between the living wage and the actual wage. It is an addition to the wage in that sense, whether it be called contingent and supplementary. None the less, it is labour's share in the profits, and as it is a remuneration which takes the form of a share in profits, it comes within the mischief of s. 10 of the Banking Act."

The Supreme Court did not decide the remaining two questions.

45. Section 10 of the Banking Companies Act was amended by the Banking Companies (Amendment) Act, 95 of 1955. By the amendment, to sub-clause (ii) of section 10(1)(b), a proviso is added in the terms following:—

"Provided that nothing contained in this sub-clause shall apply to the payment by a banking company of (a) any bonus in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such bankingn company or in accordance with the usual practice prevailing in banking business * * *."

As a result of this amendment, the former bar imposed by section 10 to the payment of bonus is removed.

46. The formula evolved by the Full Bench of the Labour Appellate Tribunal in Millowners' Association, Bombay *vs.* Rashtriya Mill Mazdoor Sangh, (1950) 2 LLJ. page 1247, has been subsequently applied in many industries. It came up for detailed examination before the Supreme Court in the case of The Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka *vs.* Its Workmen and another, reported in (1959) Supreme Court Reports, page 925. In that case, the employers had paid bonus to workmen equal to three months' wages. The workmen employed by one of the appellants had demanded bonus equivalent to seven months basic wages with dearness allowance whilst those of another appellant had demanded six months basic wages with dearness allowance. The appellants in that case had contended that after making deductions for the prior charges from the gross profits in accordance with the formula evolved by the Full Bench of the Labour Appellate Tribunal, there was no available surplus left and consequently, the workmen could not claim any bonus. The workmen contended that the formula itself required revision as the employers were becoming increasingly more rehabilitation conscious and their appetite for the provision for rehabilitation was fast growing with the result that in most cases, after allowing for rehabilitation, there was no surplus left for the payment of bonus and the main object of the formula was thus frustrated. The Supreme Court, after referring to the genesis and the terms of the formula evolved by the Full Bench, has observed at page 943 as under:—

"..... This formula is based on considerations of social justice and is intended to satisfy the legitimate claims of both capital and labour in respect of the profits made by the industry in a particular year. It takes the particular year as a unit and makes all its notional calculations on the basis of the gross profits usually taken from the profit and loss accounts; .....".

In dealing with the question of revision of the formula, the Supreme Court has expressed itself at page 951 in terms following:—

> "It may be conceded that there is some force in some of the arguments urged in support of the plea that the formula should be revised and its priorities should be readjusted and redefined; but, on the other hand, we cannot ignore the fact that on the whole the formula has worked satisfactorily in a large number of industries all over the country. Except for a few cases, particularly in Bombay, where some of the tribunals have taken the view that, in its rigid form, the formula has become unworkable from the point of view of labour, in a majority of cases industrial disputes arising between employers and their workmen in regard to bonus have been settled by tribunals on the basis of this formula; and it would not be unreasonable or inaccurate to say that by and large labour's claim for bonus has been fairly and satisfactorily dealt with. The main source of contest in the working of the formula centres round the industry's claim for rehabilitation; but, as we shall presently point out, if this claim is carefully scrutinised and examined in the light of evidence which the employer has to produce in support of his claim, even the settlement of this item would, as it is intended to, invest the tribunal with sufficient discretion to make the working of the formula elastic enough to meet its two-fold object of doing justice both to industry and labour."

The Supreme Court has thereafter observed that labour's claim for bonus should be decided by tribunals on the basis of the formula without attempting to revise it. It has further observed as under:—

> "whilst we are not prepared to accede to the argument that the formula should be revised, we wish to emphasise that the formula is elastic enough to meet reasonably the claims of the industry and labour for fairplay and justice. In its broad features it recognises the claims of the industry and tabulates them under different items as prior charges, and then provides for the distribution of available surplus between the labour, the industry and the shareholders. The items specified in the formula have to be worked out notionally on theoretical grounds; in determining the content of each one of the items it is therefore essential to scrutinise and weigh carefully all the relevant and material facts. If the content of each item is determined objectively in the light of all relevant and material facts, the tribunals would generally find it possible to make reasonable adjustments between the rival claims and provide for a fair distribution of the available surplus. In this sense it is necessary to treat the formula as elastic and not rigid in working out detailed calculations under it."

The Supreme Court has in that case fully dealt with each one of the provisions of the Full Bench formula.

47. In the case of the Standard Vacuum Refining Co. of India *vs.* Its Workmen and Another, reported in (1961) 3 S.C.R., page 536, the Supreme Court, after observing that the concept of a living wage was not a static concept and that it was expanding and the number of its constituents and their respective contents were bound to expand and widen with the development and growth of national economy, has stated at page 561 that it wished to make it clear that its decision in that case should not be taken to mean that as soon as a living wage standard was reached, no claim for bonus could be made by workmen and that the said question may have to be considered on its merits if and when it arose. In dealing with the claim that there may be a ceiling in the matter of awarding bonus so that excessive claims for bonus would be discouraged, the Supreme Court has observed that in its opinion, it would be inadvisable and inexpedient to put such a ceiling. It has further observed at page 562 as follows:—

> ".....This Court has consistently refused to lay down any rigid rule or formula which would govern the distribution of the available surplus between the three claimants. The decision of this question must inevitably depend on a proper assessment of all the relevant facts. If wages are small and the profits are high then the workmen would be entitled to have a high rate of bonus. Indeed, if an employer makes consistently high profits and the wages continue to be low it may justify the increase in the wage structure itself: in other words, the award of bonus would have some relation to the wages paid to the employees. It is also true that unreasonably high or extravagant claims for bonus cannot be entertained just because the available surplus would justify such a claim. As has been observed by the Labour Appellate Tribunal in Burmah-Shell

Oil Storage and Distributing Co. of India Ltd., Bombay *vs.* Their Workmen (1953), 2 LLJ. 246, care must be taken to see that the bonus which is given is not so excessive as to create fresh problems in the vicinity that upset emoluments all-round or that it creates industrial discontent or the possible emergence of a privileged class. The impact of the award of bonus in an industrial dispute on comparable employments or on other employments in the region cannot be altogether ignored, though its effect should not be over-estimated either."

48. The question regarding the powers of the Industrial Tribunals in connection with awarding bonus came up for consideration before the Supreme Court in the case of The New Maneck Chowk Spinning and Weaving Co. Ltd., Ahmedabad and others *vs.* The Textile Labour Association, Ahmedabad, reported in (1961) 3 S.C.R., page 1. In that case, the Textile Labour Association at Ahmedabad had entered into a five-year pact with the Ahmedabad Millowners' Association representing the member mills, in regard to payment of bonus to employees of the mills for the years 1953 to 1957. The Textile Labour Association demanded bonus for the year 1958 on the basis of the pact, but the millowners claimed that the pact was contrary to the Full Bench formula which had been approved by the Supreme Court in the case of the Associated Cement Companies Ltd. *vs.* Their Workmen. The Industrial Tribunal to which the dispute was referred took the view that the pact did not in any way run counter to the law laid down by the Supreme Court and that extension of the agreement for one year more would help in promoting peace in the industry in Ahmedabad. In that case the Supreme Court has observed that there was no doubt that it was open to an industrial court in an appropriate case to impose new obligations on the parties before it or modify contracts in the interest of industrial peace or give awards which may have the effect of extending existing agreement or making a new one, but that did not mean that it could do anything and everything when dealing with an industrial dispute, that this power was conditioned by the subject-matter with which it was dealing and also by the existing industrial law and it would not be open to it while dealing with a particular matter before it to overlook the industrial law relating to that matter as laid down by the legislature or by the Supreme Court. In connection with the decision under appeal it observed as follows:—

".....by extending the Agreement the tribunal made it possible for payment of a minimum bonus even when there was either insufficient available surplus to pay bonus or no available surplus at all or even actual loss; the tribunal was thus definitely going against the industrial law relating to bonus as laid down by this Court. It had in our opinion no power to do so."

In dealing with the industry-cum-region approach to the problem of bonus, it stated that in its opinion there was no scope for an approach of that kind in the case of bonus, the basic concept of which was that payment depended on surplus of profits available according to some formula in the case of each industrial concern. In dealing with the argument that time had come when the industrial courts would have to face the problem of radically changing the Full Bench formula, the Supreme Court once again reiterated what it had stated in the case of Associated Cement Companies (1959) S.C.R., 925, in words following:—

"These matters can be properly and effectively decided by an industrial court if the major representative industries in the country and their employees are brought before it with a proper reference, or it can be tackled more appropriately by a high-power commission appointed in that behalf."

49. In the month of April 1959, the All India Bank Employees Association, by its charter of demands, made a demand *inter alia* in connection with bonus. Demand No. 24 pertaining to bonus was as under:—

"24.—*Bonus*—All employees should be paid bonus at the following rates for the years 1957 and 1958:—

(1) A Class Banks—An adequate bonus with a minimum of four months pay.

(2) B Class Banks—An adequate bonus with a minimum of three months pay.

(3) C Class Banks—An adequate bonus with a minimum of two months pay."

By the expression 'A Class Banks' the Association meant banks whose working funds amounted to Rs. 25 crores and more, all Exchange Banks and all Subsidiaries of the State Bank of India By the expression 'B Class Banks' the Association meant

banks whose working funds amounted to Rs. 7½ crores and more but were below Rs. 25 crores. By the expression 'C Class Banks' the Association meant banks whose working funds were below Rs. 7½ crores. Similar demands were also made by the various constituent units of the All India Bank Employees Association. On behalf of the All India Bank Employees Federation and the units affiliated to it, a demand was made that bonus to workmen in a bank should be linked with the dividend declared by the bank each year in the manner following:—

> "upto 3 per cent. dividend of the bank concerned, one month's salary including all allowances and thereafter with every increase of ½ per cent. in the dividend of the Bank concerned, five days salary inclusive of all allowances should be paid. Every employees should be paid minimum one bonus inclusive of all allowances every year."

50. On 22nd September 1960, the Government of India in the Ministry of Labour and Employment made the present reference. On 6th December 1961 the Government of India set up a Commission to study the question of bonus to workers in industrial employments and to make suitable recommendations. The terms of reference of the Commission are the following:—

"(1) To define the concept of bonus and to consider, in relation to industrial employments, the question of payment of bonus based on profits and recommend principles for computation of such bonus and methods of payment.

NOTE:—The term "Industrial employments" will include employment in the private sector and in establishments in the public sector not departmentally run and which compete with establishments in the private sector.

(2) To determine the extent to which the quantum of bonus should be influenced by the prevailing level of remuneration.

(3) (a) To determine what the prior charges should be in different circumstances and how they should be calculated.

(b) To determine conditions under which bonus payments should be made unitwise, industrywise, and industry-cum-regionwise.

(4) To consider whether the bonus due to workers, beyond a specified amount, should be paid in the form of National Saving Certificates or in any other form.

(5) To consider whether there should be lower limits irrespective of losses in particular establishments, and upper limits for distribution in one year and, if so, the manner of carrying forward profits and losses over a prescribed period.

(6) To suggest an appropriate machinery and method of the settlement of bonus disputes.

(7) To make such other recommendations regarding matters concerning bonus that might be placed before the Commission on an agreed basis by the employers' (including the public sector) and the workers' representatives."

CHAPTER IV

PRELIMINARY OBJECTIONS

51. One of the preliminary objections raised in the pleadings related to the constitutional validity of the newly enacted section 34A of the Banking Companies Act, 1949. It was contended that until the issue of disclosure of secret reserves was decided, no bonus formula could be worked out and that it was difficult for workers to place before the Tribunal any principles for determination of bonus in respect of banking companies. In view of the decision of the Supreme Court in Civil Appeal No. 154 of 1961 and in Writ Petitions Nos. 70, 80 and 82 of 1961 (The All India Bank Employees Association and others on the one hand and the National Industrial Tribunal and others on the other) dated 28th August 1961, reported in (1961) II LLJ. page 385, the aforesaid objection was not pressed at the hearing.

52. The All India Bank Employees Association has, by paragraph 62 of its further statement of claim, dated 5th November 1961, raised the following further preliminary objections :—

"(1) The question of bonus as referred to does not constitute an industrial dispute. Industrial dispute has been defined in section (2) (k) of the Industrial Disputes Act, 1947 as follows :—"Industrial dispute means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

(2) The reference as worded does not constitute an industrial dispute in the light of the above definition and the reference, therefore, is bad in law and liable to be rejected.

(3) Neither the Association nor any other union of the bank employees nor the banks have raised any dispute nor was any dispute apprehended as regards the principles and conditions under which the bonus should be payable, nor was any dispute ever raised about the qualification of eligibility and method of computation. No dispute ever existed nor was ever debated about the question as to whether or not the banks should be allowed to make provision for all matters for which provision is necessary by or under any of the Acts applicable to the banks or which are usually provided for by the banks. The various questions included in the said item in the reference order were never discussed by the banks or by the bank employees at a conference table nor any dispute or difference of opinion was voiced by any of the parties to this dispute before the reference order was made. That situation would only arise when discussions for settlement of the quantum of bonus would take place between the parties. It can never arise incidentally and in isolation. The Government had, therefore, no ground or basis to hold that any industrial dispute existed or was apprehended on the terms of reference now before this Honourable Tribunal.

(4) The opposition of the bank employees to the introduction of section 34-A of the Banking Companies Act, 1949, can at the most be an opposition to a statute but cannot constitute a difference between employers and the employees, because an industrial dispute cannot arise out of the provisions of statute but must arise out of an industrial relation between the employers and the employees.

(5) The reference is bad for the reason that it is not open to the Government to apprehend the arising of an industrial dispute without any gesture or move made either by the employees or by the banks. It is not open to the Government to imagine that an industrial dispute exists or to apprehend that a dispute exists or may arise out of its own fancy.

(6) The question of deciding the principles and conditions under which the bonus should be payable or deciding the question of qualification for eligibility and method of computation after making provisions for certain matters cannot constitute an industrial dispute for reasons of vagueness and uncertainty.

(7) An industrial tribunal is permitted to make an award which may be an interim or a final determination of an industrial dispute or on any question relating thereto but the Tribunal is not permitted under the Act to decide a theory or a method relating to an industrial dispute without the specific dispute having been referred to it.

(8) The Central Government under section 10(1)(a) is empowered to refer an industrial dispute or any matter appearing to be connected with, or relevant to the dispute but this power can be exercised only when the matter connected with the dispute or relevant thereto is a matter that can be enforced in material form against the parties under section 10(3) of the Act.

(9) The reference is bad for the reason that an award on principles about bonus, qualification for eligibility, conditions under which it would be payable and method of its computation are all theoretical matters and without substance unless the main dispute about a specific quantum of

bonus for specific year is referred for adjudication. Mere principles or theoretical notions that may have to be considered, discussed and determined before a final relief could be given would, in itself, not constitute an industrial dispute.

(10) The determination of principles, eligibility, etc. cannot be enforced and no relief can be obtained from an award which proceeds to determine such theoretical principles etc. An award under the Act creates certain rights and liabilities contravention of which becomes penal. An award on theory or mere principles cannot create such obligations. The reference is bad in law for this reason also.

(11) An industrial dispute raised by employees seeks a material relief and an award on an item referred to this Honourable Tribunal for adjudication cannot bring in any such material relief and would not be amenable to enforcement under section 33C of the Act particularly when a demand for bonus is a demand for cash payment or a monetary benefit.

(12) Principles on which bonus should be paid or conditions on which it should be paid are matters which cannot be decided in vacuum and without reference to facts in each case because principles and conditions may differ from case to case and from situation to situation and cannot validly constitute an industrial dispute under the Act and the item under the reference cannot constitute a valid industrial dispute. The reference is bad for this reason also.

(13) Statutory provisions regulating the affairs of the banking companies contained in any Act are binding not only on the banking companies and their employees but also on this Honourable Tribunal and, therefore, no industrial dispute can ever arise between the parties as regards those provisions. On this point, therefore, an industrial dispute cannot exist and cannot be apprehended.

(14) The reference is bad on the ground that it denies equality before the law or equal protection of the laws and that it offends the provisions of Article 14 of the Constitution. The reference order seeks to differentiate and discriminate among banks *inter se* and also bank employees *inter se*. The Association had served its charter of demands against all the banks and the exclusion of the public sector banks such as the Reserve Bank of India, the State Bank of India and State Subsidiary Banks from the scope of the present adjudication caters to a most unwholesome and unwarranted discrimination as between banks which compete with each other. Any award of this Honourable Tribunal would thus ultimately result in differentiating and discriminating between banks and banks and between bank employees and bank employees. The award would be the starting point for disputes between the banks in the private sector and those in the public sector. In fact the very basic object of the Industrial Disputes Act to settle industrial disputes and bring industrial peace would be frustrated by any direction in this reference by this Honourable Tribunal. In Reference No. 1 of 1960 before this very Honourable Tribunal the State Bank of India and State Subsidiary Banks have been included for common service conditions. The exclusion of these banks from this reference will lead to anomalous position in that the banks now before this Honourable Tribunal would, if these preliminary objections are not upheld, have a certain set of principles and conditions on which bonus should be payable as well as other conditions that may be directed in regard to bonus while the banks not before this Honourable Tribunal would be free to have a separate set of such principles and conditions etc.

(15) The reference is bad in that the Central Government has malafide issued this order of reference making a colourable use of the powers conferred upon it by sub-section (1) (a) of section 10 of the Industrial Disputes Act, 1947, in not referring the real or the substantial dispute, *viz.*, the Association's demand for a certain quantum of bonus for specific years and merely referring for adjudication the shadow of the substance of the dispute, the principles, *viz.*, the principles and conditions on which bonus should be payable. The reference is bad in law because there is malice in law contained in this order of reference.

(16) By virtue of the pendency of the reference before this Honourable Tribunal the workmen in the banking companies which are parties to this reference are malafide prevented from going on strike under section 23 of the Act. The Association submits that the prohibition under section

23 of the Act continues during the pendency of proceedings before this Honourable Tribunal and two months after the conclusion of such proceedings and even thereafter for a minimum period of 12 months. Such a prohibition of strike would prevent the bank employees raise an agitation in pursuance of their original claims for bonus for specific years in terms of any decision that this Honourable Tribunal may arrive at on the merits of the reference. Thus any decision of this Tribunal on the merits of the reference would militate against the Industrial Disputes Act itself.

(17) This restriction on the fundamental right of workmen to go on strike for the purpose of winning their economic demands—bonus, in this particular case—makes this reference bad in law and malafide in the eyes of law. The reference should therefore be rejected."

The All India Bank Employees Association has stated in the same paragraph that the Association craves leave to raise further preliminary objections at the time of hearing of the reference. In fact, no further preliminary objections were raised at the time of the hearing of the reference.

53. The All India Bank Employees Federation and the Vadodra Rajya Bank Nokar Sangh and the Indian Overseas Bank Employees' Union have pleaded that the reference was vague and that it was difficult to lay down a precise formula without looking at the actual profits of each bank for the years in question, that the reference savours of discrimination between banks and banks and between banks and their respective employees inasmuch as the State Bank of India and its Subsidiaries were not included in the reference. The All India Bank of Baroda Employees Federation and the Indian Overseas Bank Employees Union have submitted that the order of reference was invalid and bad in law, that the matter that was referred to this Tribunal for adjudication was only a matter appearing to be connected with or relevant to the main dispute relating to the fixation of quantum of bonus to be paid to the employees in respect of the years 1957 to 1959, that the order referring only connected or relevant matters without referring the main matter or dispute for adjudication was incomplete and therefore bad in law and that the Tribunal had no jurisdiction to decide the reference.

54. The Indian Banks Association has denied the various contentions raised by the All India Bank Employees Association. It has submitted that in order to evolve uniform methods and principles for payment of bonus in the banking industry in view of the different and divergent claims made by the employees' unions in respect of bonus and to preserve industrial peace, the Central Government had *bona fide* made the reference under section 10(1A) of the Industrial Disputes Act, 1947. It has pleaded that at all relevant times there was a dispute or an apprehended dispute regarding the principles and conditions under which bonus should be payable as also as regards the questions of eligibility for the same and the method of computation. It has further pleaded that as held by the Supreme Court, there was no fundamental right of workmen to go on strike.

55. The Bombay Exchange Banks Association has pleaded that both the Government, and at an earlier stage, the banks, had before them demands for bonus not only made by the All India Bank Employees Association but also by the All India Bank Employees Federation and other unions, "differing materially not only as regards the principles and method of computation of the bonus demanded, but also on eligibility", that the difference in approach was obvious on a perusal of the statements of claim filed before this Tribunal, that the Government, in the light of such demands, had made the present reference in the manner it had done so as to set at rest not only the differences between the banks and their workmen on the question of bonus, but also the differences between the various unions as to the basis on which bonus should be paid, that it was incorrect to state that neither the All India Bank Employees Assocaition nor any other union of bank employees had raised any dispute that did not involve consideration in the first instance of the principles and conditions under which bonus should be payable by banking companies and that similar was the position as regards qualifications and eligibility. It has further pleaded that the reference made by the Central Government was an administrative act, the correctness of which could not be canvassed before an Industrial Tribunal or a court of law either on the ground that the Government did not have any material before it to come to the conclusion that there was a dispute or that a dispute was apprehended, that even among the workmen there was, and is, a difference as to the principles, the method of computation, the conditions under which bonus should be paid and eligibility for

bonus, that the Tribunal in making an award in this reference will not be deciding any theory, that the award will amount to a final determination of the dispute as regards the principles, method of computation etc., in connection with bonus payable to the workmen of banks, that what the Government had referred was an industrial dispute and no question arises of the Government only referring any matter appearing to be connected with or relevant to an industrial dispute, that an award made on this reference will be binding on the parties and such an award will certainly create rights and liabilities in the sense that if on an application of the principles etc., contained in the award a claim for bonus arises, the workmen will have a right to that bonus and banks would be liable to pay the bonus, that reference to the provisions of section 33C was totally irrelevant and besides the point, that an award does not cease to be one merely because there is no scope for an application under the said section, that the Tribunal will not be adjudicating in vacuum or without reference to the facts, that there is no violation of the provisions of Article 14 of the Constitution, that the reference does not differentiate or discriminate as alleged or otherwise and that even assuming without admitting that there was differentiation, such differentiation was rational and was a result of a reasonable classification in that the only inter State Banks excluded were those in the public sector and the Reserve Bank was not a commercial bank at all. It has denied that any colourable use of powers had been made or that the reference was in any way bad in law or that there was malice in law contained in the order of reference or that the decision of the Tribunal would militate against the Industrial Disputes Act or any other law or that there was any restriction on any fundamental right. It stated that the Supreme Court had held that the workmen had no fundamental right to go on strike.

56. The Indian Banks Association as well as the Bombay Exchange Banks Association have denied that there is any vagueness in the reference or that there is any discrimination as alleged by the All India Bank Employees Federation. The Bombay Exchange Banks Association has further pleaded that it was not aware of the reasons for excluding the State Bank of India and its subsidiaries from the reference and has submitted that the reference was required to be dealt with as it stood.

57. The Northern India Banks Association, in reply to the statement of claim filed by the All India Bank Employees Federation, has denied that the reference was in any way vague. It has pleaded that there is no discrimination between banks and banks and their respective employees and that in any event, the same could not affect the validity of the reference. The Miraj State Bank has put in a reply taking practically the same stand as the one taken by the Indian Banks Association in connection with these preliminary objections.

58. The dispute in connection with bonus in the banking industry is fairly old. The Sen Tribunal was constituted as far back as June 1949 to adjudicate upon the dispute which existed between 205 banking companies and their workmen relating to "bonus, including the qualifications for eligibility and method of payment." The dispute remained unresolved as the award of the Sen Tribunal was set aside by the Supreme Court. The dispute regarding bonus was again referred by the Government to the Sastry Tribunal in identical terms. The Sastry Tribunal merely made certain recommendations in connection therewith in view of the legal difficulties experienced by the Tribunal. The Labour Appellate Tribunal differed from the Sastry Tribunal as regards the scope of this term of reference. The Labour Appellate Tribunal further held that section 10 of the Banknig Companies Act as it then stood was no bar to the claim for bonus made by the employees. The Supreme Court, in appeal, held that section 10 of the Banking Companies Act, prior to its amendment in the year 1956, prohibited the grant of industrial bonus to bank employees inasmuch as such bonus was remuneration which took the form of a share in the profits of the banking company. The dispute relating to bonus thus remained unresolved. In fact, till the amendment of section 10 of the Banking Companies Act in the year 1956, there was a legal bar to the raising of any industrial dispute in connection therewith. After the removal of the bar, there was no settlement of any dispute relating to bonus. The demands made on behalf of the workmen employed in banks by the All India Bank Employees Association and the All India Bank Employees Federation and by unions affiliated to them, show that there was considerable divergence as regards the claim for bonus and the principles on which it was based. In the charter of demands of the All India Bank Employees Association, a claim was made for "adequate bonus" with a minimum of four months pay for A Class banks, with a minimum of three months pay for B Class banks and with a minimum of two

months pay for C Class banks for the years 1957 and 1958. The claim made by the All India Bank Employees Federation and the unions affiliated to it was that bonus should be linked with the dividend declared by a bank "every year" as follows:—

> "Upto 3 per cent dividend of the Bank concerned, one month's salary including all allowances and thereafter with every increase of ½ per cent in the dividend of the Bank concerned, five days salary inclusive of all allowances should be paid. Every employee should be paid one (months) bonus inclusive of all allowances every year."

None of these demands was accepted by the banks. A reference has, therefore, been made by the Central Government to this Tribunal in terms referred to earlier. In view of this, it would be contrary to facts to say that "neither the Association nor any other union of the bank employees nor the banks have raised any dispute nor was any dispute apprehended as regards the principles and conditions under which the bonus should be payable nor was any dispute ever raised about the qualification of eligibility and method of computation." A dispute, in fact, existed. The question of bonus was a live issue between the parties. The same is also evident from the statements of claims made before me and the written statements filed by banks. There existed and there does exist an industrial dispute in connection with bonus, and the Central Government was entitled to refer the same for adjudication to this Tribunal. The contentions raised in this connection are based on incorrect facts and are without any merit.

59. The next question which I will consider is whether there could be a reference in connection with the general principles governing bonus without there being a reference in connection with the quantum of bonus to be awarded for a particular year. A dispute concerning bonus may relate to the general principles on which bonus can be claimed or be awarded including the method of computation of bonus, the qualification for eligibility and conditions under which it is payable. It may also relate to the quantum thereof, having regard to the application of those principles to the facts pertaining to a bank or banks in each year. A dispute may relate to either of these matters or both these matters. Where numerous banks are concerned and where the disputes relate both to the general principles and to the quantum of bonus payable by the banks for any particular year or years, it is open to the Government to refer the disputes relating to principles governing bonus applicable to all the banks without at the same time referring the disputes relating to any particular bank or banks regarding the quantum of bonus payable for any particular year or years. A similar reference was made by the Government when the Sen Tribunal was appointed and also when the Sastry Tribunal was appointed. In a dispute relating to general principles governing bonus. all the banking companies may be interested, whilst in a dispute governing the quantum of bonus payable for a particular year, if bonus is payable unitwise, the particular bank concerned alone may be interested, and if bonus is payable by banks classwise, a particular class of banks alone may be interested. It is both lawful and eminently just and convenient that where general principles relating to bonus are in dispute, all banking companies interested therein should be made parties to one reference. There is no merit in the plea that there cannot be an industrial dispute in connection with the matter referred to this Tribunal "for reasons of vagueness and uncertainty", as alleged. There is no vagueness or uncertainty in the reference. If a dispute concerning principles governing bonus involves a question of national importance and also is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute, it can be referred for adjudication by a National Tribunal, without the Tribunal being burdened with a reference relating to the quantum of bonus which may have to be paid as a result of the working out and application of the principles so evolved for particular years by particular banks or a class of banks. In my view, Government had sufficient reason to come to the conclusion that an industrial dispute existed or was apprehended as stated in the reference and was empowered and entitled to make the reference.

60. In view of what is stated above, it is not necessary to consider the plea that the making of the reference by the Government being an administrative act, the correctness thereof cannot be canvassed before me on the ground that the Government did not have any material before it to come to the conclusion that there was a dispute or that a dispute was apprehended. The award given by this Tribunal in connection with "bonus—principles and conditions under which payable, qualification for eligibility and method of computation" would be binding on all parties to the reference under the provisions of section 18(3) of the Industrial

Disputes Act, 1947 and would create rights and obligations thereunder and so long as it remains in force, bonus would have to be calculated and would become payable on the basis thereof. The decision given in such reference would not be a decision "in vacuum". Equally without substance is the plea that the reference offends the provisions of Article 14 of the Constitution. It is pleaded that the reference order seeks to differentiate and discriminate amongst banks *inter se* and bank employees *inter se*. There are eleven banks which were included in the order of reference dated 21st March 1960 in Reference No. 1 of 1960 before this Tribunal which are not included in the present reference. Two out of these eleven banks had gone into liquidation between the date of the order of reference in Reference No. 1 of 1960 and the date of this reference. The remaining nine banks are the State Bank of India and its eight Subsidiaries. All these nine banks are in the public sector and are governed by special enactments. The Reserve Bank is governed by a special enactment. All these banks in the public sector have certain statutory functions to perform. The mere fact that these banks have not been made parties to the present reference does not render the reference in any sense bad under the provisions of Article 14 of the Constitution of India. Merely because an order of reference has been made in respect of some banks and not in respect of others would not render the reference bad. The All India Bank Employees' Association has signally failed to establish any *mala fides* on the part of the Central Government in issuing the order of reference. There is no malice in law contained in the order of reference. There is no substance in the plea that any decision given by this Tribunal on merits would militate against the Industrial Disputes Act as alleged or at all, or that there is any "fundamental right" conferred under the Constitution on workmen to go on strike for the purpose of winning their economic demands. The submission made by the All India Bank Employees' Federation "that the reference is vague" or "that the reference savours of discrimination" has no merit. The pleas of the All India Bank of Baroda Employees' Federation and the Indian Overseas Bank Employees' Union that the order of reference is invalid and bad in law and that the Tribunal has no jurisdiction to decide the reference, are equally without any substance. The reference is in no sense bad in law or invalid. All the preliminary objections are without any merit and are rejected.

61. It is stated by the All India Bank Employees' Association that "the Government of India has appointed a Bonus Commission which will be considering all the aspects of the bonus question both in the private and public sector and the enquiry that will be made by that Commission will be a comprehensive enquiry and the workmen concerned in this dispute would have a right to appear before that Bonus Commission and state their views on all the aspects of the question of bonus". Thereafter, it is pleaded as under:—

> "It is very likely that the recommendations of the Bonus Commission would be later on incorporated in the Statute of the Parliament. The Association, therefore, respectfully submits to this Honourable Tribunal that the Tribunal may be pleased to reject the reference and direct the parties to appear and place their views before the said Bonus Commission if they so desire."

The terms of reference of the said Commission provide for the definition of the concept of bonus and the consideration, in relation to industrial employment, of the question of payment of bonus based on profits and the recommendation of principles for computation of such bonus and methods of payment. They provide for the determination of the extent to which the quantum of bonus should be influenced by the prevailing level of remuneration, of what prior charges should be in different circumstances and how they should be calculated, and of the conditions under which bonus payments should be made unitwise, industrywise and industry-*cum*-regionwise. The terms of reference include several other matters and are comprehensive. The functions however of a Commission and of a National Tribunal are distinct and different. Merely because a Commission is appointed, a National Tribunal cannot cease to function or reject the reference. One cannot predicate and say that the recommendations of the Commission would be incorporated in an Act of Parliament. A National Tribunal has to function within the limits of the industrial law as laid down by the legislature and as set out by the Supreme Court. The reference to this Tribunal relates to certain banking companies and their workmen and this Tribunal has to examine the question of bonus within the limits of the industrial law and within the limits of the terms of the reference. It is not open to this Tribunal to direct any parties to appear and place their views before the Bonus Commission. The mere fact that Government has appointed a Bonus Commission would not constitute a valid

ground for rejecting the reference, and the demand made in that connection cannot be acceded to.

CHAPTER V

MERITS OF THE QUESTION RELATING TO BONUS

62. I will now proceed to deal with the merits of the matter concerning bonus. The All India Bank Employees Association has, in connection with the principles governing bonus and conditions under which bonus should be payable, pleaded that so long as a living wage had not been obtained, workmen would have a right to claim bonus even in cases where an industry would be making a loss, though in such cases, the payment of bonus would be small, and that where the goal of living wage has been attained, bonus, like profit sharing, would be a cash incentive to greater efficiency and production. The Association has emphatically stated that bonus was a deferred wage and that the workmen working in an industry had a right to claim bonus over and above their stipulated wages where such wages fell short of the living wage standard. It has also submitted that in the banking industry, bonus cannot be related to trading profits but should be related to dividends, that in the banking industry, the profit and loss accounts of banks, as disclosed in the published balance-sheets, were fictitious and never reflected a correct picture of trading results. that bonus should not be determined unit-wise but should be determined class-wise or on the basis of the whole industry where the whole industry or a major part of it was before the tribunal and that bonus in the banking industry should be paid on the same principles and basis as those evolved by the Sen Tribunal, except as regards the rates and except as regards the unit-wise basis which should be replaced by a classwise basis. The Association has further pleaded that the computation of the percentage of dividends should be arrived at after averaging the dividends of banks classwise and that the method of computation prescribed by the Sen Tribunal should be applied on the dividends arrived at as above, and that a minimum bonus of one month's pay must always be paid to workmen in the banking industry.

63. In the event of the Tribunal not accepting the above principle, the Association has, in the alternative, pleaded that the quantum of bonus should be decided on gross profits made during the particular year by banks considered classwise and the items of expenditure for previous years and previous liabilities should not be allowed to reduce the gross profits of the year in question and that "where the classes of banks would be giving dividends, the workmen must necessarily be given bonus which in any event would not fall below the same amount as dividends for the year in question", that the balance-sheets and the profit and loss accounts of the class of banks concerned should be closely scrutinised particularly to see whether the entries have been made on the debit side deliberately and *mala fide* to reduce the amount of gross profits or whether some of the items of income are not disclosed, that if there were entries on the expenditure side which were wholly extraneous or entirely unrelated to the trade of the year, the same should not be allowed to the industry, that only normal depreciation should be allowed and that notional normal depreciation should not be allowed, that where the actual provision for income-tax was less than the statutory income-tax, the actual provision should be allowed, that in all other cases, statutory income-tax after considering allowable items, should be allowed, that the return on the paid-up capital should be much less than the usual return allowed in the bonus cases for other industries and should never be more than four per cent., that where there was bonus share capital, a return of two per cent. only should be allowed and not more, that only the reserves in excess of the reserves required under the Banking Companies Act, when actually used as working capital during the year should be allowed a return of not more than two per cent., that depreciation reserves should not be permitted any return even though such reserves may have been used as working capital, that no provision for rehabilitation should be allowed on buildings and other fixed assets, that provision which must be made under the compulsion of the Banking Companies Act should be allowed in the calculation of bonus but only to the extent of such compulsion, that as regards all other provisions which were usually provided for by banks, the banks should be called upon to state clearly what those provisions were and the purpose for which the provisions were made and the extent thereof, that the Tribunal should thoroughly investigate the necessity or justifiability of such provisions in such a manner that excessive provisions should not prejudicially affect the claim of the employees for adequate bonus and that the extent of the justifiability of those provisions must be made justiciable by the Tribunal.

64. The All India Bank Employees Federation and the Vadodra Rajya Bank Nokar Sangh have submitted that the principles regarding bonus in other industries were well settled and that the bank employees were entitled to an adequate and substantial bonus to fill the gap between the living wage and the actual wage and to share in the profits of the banks, that the Supreme Court of India had in various decisions on bonus and particularly in the case of the Associated Cement Co. Ltd. laid down the governing principles regarding payment of bonus, that so far as the banking industry was concerned, it had been repeatedly stated by the Industrial Tribunals, Labour Appellate Tribunals and also by the Bank Award Commission that the profits shown in the balance-sheets and profit and loss accounts of the banks did not show the true and complete picture of the working results of the banks and that numerous deductions were made before the profits were shown in the balance-sheets and profit and loss accounts of the banks, that the full and complete picture relating to the profits of the banks, including the secret reserves provided for during each year should first be disclosed, that if any return was to be allowed on the reserves used as working capital as a prior charge the banks would have to disclose the total quantum of reserves on which they wished to claim the return that no provisions other than those as laid down by the Supreme Court in the Associated Cement Companies case should be allowed as a prior charge for the purpose of calculating the available surplus out of which bonus could be awarded, that if any provisions were to be made which were peculiar to any banks, the same should be taken into consideration only in distributing the available surplus, that in any case the minimum quantum of bonus should be paid by all the banks on the basis of four months emoluments for big banks and three months emoluments for small banks and that over and above the minimum bonus referred to above additional bonus should be computed on the basis of the principles referred to above. As regards the conditions for payment of bonus, it is submitted that it should be proportionate to the earnings of the workmen for the year in question irrespective of the fact whether they were in service of the bank at the time of payment or not and that bonus should be paid unconditionally.

65. The Punjab National Bank Staff Association, Eastern Circle, Calcutta, has pleaded that the quantum of bonus should be related to the working capital of the banks on the following scale:—

Working capital of less than Rs. 25 crores—3 months total wage as bonus.

Working capital of Rs. 25 crores but less than Rs. 50 crores—4 months bonus.

Working capital of Rs. 50 crores but less than Rs. 75 crores—4½ months bonus.

Working capital of Rs. 75 crores but less than Rs. 100 crores—5 months bonus.

Working capital of Rs. 100 crores but less than Rs. 125 crores—5½ months bonus.

Working capital of Rs. 125 crores but less than Rs. 200 crores—6 months bonus.

Working capital of Rs. 200 crores and above—7 months bonus.

As regards the conditions for payment of bonus it has pleaded that bonus should be calculated on the total wage earned during the official year of the bank, that a monthly wage in the formula would thus mean one-twelfth of such aggregate, that bonus may be paid in one or two instalments in a year, that persons who were eligible for bonus but who would not in service of the bank should be paid bonus on their submitting claims in writing to the bank.

66. The Indian Banks Association has pleaded that payment of bonus should not be compulsory in the case of banks as in the case of other industries having regard to the peculiar nature of the banking industry and its requirements and that the same should be left to the *bona fide* discretion of the management. Without prejudice to the aforesaid submission, it has pleaded that the principles applicable to non-baking concerns, could not apply to the banking industry and that payment of bonus to the bank employees should be governed in accordance with the principles to be evolved having regard to the peculiar nature of the business transacted by banks and the provisions of the Banking Companies Act, 1949, that "not only must the usual prior charges be deducted from the profits of the year including statutory reserves under section 17 etc., but additional items extraneous to trading profits, capital rights, etc., should be allowed to be deducted from the profits shown in the published accounts", that the return on paid-up capital and on reserves should be allowed at a higher rate than in other trades or industries in view of the great hazards to which the funds of banks were exposed and considering the change in the pattern of taxation whereby the grossing up of dividends had been recently stopped and that a suitable formula should be devised *inter alia* in view of the requirements of sections 17, 34A and other provisions and reserves permissible.

under the said Act. It has denied the claim of the All India Bank Employees Association that so long as living wage had not been attained, workmen would have a right to claim bonus even in cases where an industry would be making a loss or that bonus was a deferred wage. It has pleaded that the question about bonus where the goal of living wage had been attained, did not arise for consideration in the present reference and that the principle of linking bonus to dividend had not been accepted by the Sastry Tribunal and had been negatived by the Supreme Court. It has denied that the published balance-sheets and profit and loss accounts of the banking companies did not disclose a true and fair view of the company's affairs or were fictitious or that bonus should be paid on the same principles and basis as those evolved by the Sen Tribunal with the suggested modifications. It has pleaded *inter alia* that a unitwise approach was proper and more appropriate than a classwise approach, that the demand for a minimum bonus of one month's pay was contrary to the well-established concept of bonus, that the Tribunal "should adopt the principles relating to bonus as laid down by the Supreme Court with such modifications as may be necessary for applying the said principles to the special features of the banking industry", that the claim for bonus equal to dividends was contrary to all established principles, that the method of computation suggested whereunder gross profits must be first determined on the basis of the balance-sheets and profit and loss accounts of a class of banks was tantamount to a consolidation of the balance-sheets and profit and loss accounts of all such banks and was an impracticable solution, that the banks should be allowed as prior charge all expenditure incurred during the year in respect of known liabilities, that it was fair and just to allow at least the notional normal depreciation, that the principle of deduction of actual income-tax had been disapproved by the Supreme Court, that no discrimination should be made between bonus share capital and other subscribed capital, that there was no justification for differentiating between statutory reserves and the reserves over and above the statutory reserves when used as working capital, that depreciation reserves should be treated on the same footing as other reserves, that rehabilitation with regard to buildings, fixed assets, comptometers, accounting machines, typewriters, etc., should be provided, that all usual, necessary or permissible provisions should be allowed, that privilege was claimed "in respect of disclosure of reserves and provisions made under section 34A of the Banking Companies Act, and that the Tribunal had no jurisdiction to call for the said information or to investigate the necessity or justifiability of such provisions".

67. The Indian Banks Association has, in reply to the statement of claim filed by the All India Bank Employees Federation, pleaded *inter alia* that the Full Bench formula was not applicable in its entirety, that it denied the correctness of the submission that no provisions other than those laid down in the Associated Cement Companies case should be allowed as a prior charge for calculating the available surplus and that the demand for four months' emoluments as minimum bonus for big banks and three months' emoluments as minimum bonus for small banks was contrary to all principles and was inconsistent with the concept of bonus.

68. The Bombay Exchange Banks Association has pleaded that having regard to the nature of the banking industry and its requirements, the rights and privileges conferred upon it under the provisions of law, the requirements of law imposed upon it, the nature of the contribution of workmen employed in banks and the part played by the higher executives and the management staff of banks, it would be wrong in principle to make it compulsory for banks to pay bonus to workmen out of the profits of any particular year in which there was a profit. It has stated that all the Exchange Banks had voluntarily been paying bonus to their employees unrelated to the profits of any particular year and has assured that the 10 Exchange banks referred to by it in its written statement, dated 31st May 1961, would continue to pay such bonus voluntarily as would be sanctioned by the directors of each of the said banks. Without prejudice to the aforesaid submissions, it has pleaded that if at all any general formula or basis for the grant of bonus is to be evolved, it should not be related to the factors like deposits, working funds, reserves or dividends and that before arriving at any 'available surplus of profits' return should be provided not only for the banking company and its shareholders but also for safeguarding the interest of depositors, which was a bank's primary duty, as prior charges on profits, apart from depreciation, income and other taxes, provision for rehabilitation, replacement and modernisation and all matters usually provided for out of profits by banks. It has denied the claim made by the All India Bank Employees Association that bonus was an additional or deferred wage or that a workman had a right to claim bonus even in cases when industry was making a loss so long as a living wage had not been attained. It has pleaded that there was no final pronouncement on the concept of bonus in a case where a living wage was paid. It has denied that bonus should be related to dividends and has

submitted that such a position would lead to the same incongruous results as when the Sen Award linked bonus to dividends and that the question of dividends paid to shareholders did not arise in the case of the Indian business of its members. It has denied that the profits disclosed by banks in their published accounts were fictitious or did not reflect the correct picture of trading results and has stated that the balance-sheet and profit and loss account of a banking company disclose a true and fair view of the company's affairs and of the profit or loss in accordance with the provisions of the Companies Act, 1956 read with Banking Companies Act, 1949 and that bonus should not be linked otherwise than to the published profits. It has denied the submission that bonus should not be determined unitwise but should be determined classwise or on the basis of the whole industry or that bonus should be paid on the same principles and basis as those evolved by the Sen Tribunal or that a minimum bonus equal to one month's pay should be given or that workmen must be given bonus which, in any event, should not fall below the same amount as dividends for the year in question. It has stated that classwise determination of bonus was unacceptable. It has denied a number of submissions made by the All India Bank Employees Association regarding the method of computation of bonus and has pleaded that banks should be allowed all expenses paid during the year or provided against known liabilities, that it was equitable that notional normal depreciation, if not full statutory depreciation, should be allowed, that if a formula was evolved showing the notional gross profits, tax at the appropriate rate on such profits should be allowed, that the return on paid-up capital should be at a much higher rate than that allowed in the case of other industries, that there was no principle to justify a lower return in connection with bonus shares, that banks should be entitled to a much higher return on reserves used as working capital, that depreciation reserves should be treated as any other reserves and that the banks claimed privilege from disclosure under section 34A of the Banking Companies Act in respect of undisclosed provisions or reserves and denied the submissions made in connection therewith.

69. The Bombay Exchange Banks Association, in reply to the claim made by the All India Bank Employees Federation, has denied that no provisions other than those laid down by the Supreme Court in the Associated Cement Companies' case should be allowed as a prior charge or that the provisions peculiar to banks should merely be taken into consideration only when distributing the available surplus and has stated that the demand for minimum quantum of bonus on the basis of four months' emoluments for big banks and three months' emoluments for small banks was fantastic and unreal. It has denied the claim that bonus should be paid unconditionally or that it should be proportionate to the earnings of the workmen for the year in question irrespective of the fact whether they were in service of the banks at the time of payment or not.

70. The Northern India Banks Association has pleaded that payment of bonus should not be compulsory in the case of banks as in the case of other industries and should be left to the *bona fide* discretion of the management on grounds similar to those set out by the Indian Banks Association. It has pleaded that the principles regarding bonus settled in respect of other industries could not, having regard to the nature of their business apply in the case of banking companies and that payment of bonus to bank employees should be governed in accordance with the principles to be evolved having regard to the peculiar nature of the business transacted by banks under the provisions of the Banking Companies Act, that in the case of payment of bonus to bank employees, in addition to the usual prior charges including statutory reserves, additional items extraneous to trading profits, capital rates, etc., have to be allowed to be deducted from the profits shown in the published accounts, that return on the paid-up capital and on reserves should be allowed at a higher rate to banks than in other trades or industries, that the question of bonus can be decided from the figures given in the balance-sheets without reference to secret reserves and that "in view of the requirements of sections 17 and 34A and other provisions and reserves permissible under the Banking Companies Act, a suitable formula is to be devised". In reply to the statement of claim of the All India Bank Employees Federation it has further pleaded that the reserves and the provisions made by banks cannot be questioned in view of the statutory protection given in this regard and that the claim for four months bonus for big banks and three months bonus for small banks was contrary to all principles and was inconsistent with the concept of bonus.

71. The Miraj State Bank Limited has more or less adopted the stand taken by the Indian Banks Association. The Bharatha Lakshmi Bank Ltd., has pleaded as follows:—

> "As regards principles and conditions under which Bonus is payable by Banking Companies, we beg to sumbit that out of the net profits earned

for the year, provision is to be made for payment for Income-tax and other taxes and for allocation to statutory Reserve Fund. Out of the balance remaining, provision will have to be made for payment of a reasonable Dividend to Shareholders. Only after making the above provisions, question of payment of Bonus to employees will come up for consideration, should there be availability of further allocations from net profits. Bonus is not to take priority over Dividend to Shareholders and the above-mentioned provisions are either statutory requirements to be complied with under certain Acts or legitimate appropriations in common amongst all Banks.

Besides, Bonus is only an *ex-gratia* payment based on the net profits available and is not a legitimate claim of the employees."

72. Before dealing with the various points urged by the parties, it would be necessary first to see what is the ambit and scope of the reference. The terms of reference to this Tribunal provide for the adjudication of the dispute concerning:—

"*Bonus*—principles and conditions under which payable, qualification for eligibility and method of computation, after making provision for all matters for which provision is necessary by or under any of the Acts applicable to the banks or which are usually provided for by banks."

The reference is in connection with the dispute concerning bonus. The expression "bonus" in connection with industrial disputes has now acquired a definite meaning. In the case of The New Maneck Chowk Spinning and Weaving Co. Ltd., Ahmedabad and others *vs.* The Textile Labour Association, Ahmedabad, reported in (1961) 3 S.C.R., page 1, the Supreme Court has dealt with the concept of bonus as evolved in the industrial law of the country by Industrial Tribunals and by the decisions of the Supreme Court. In that case the Supreme Court has observed as follows:—

"So far as we can see, there are four types of bonus which have been evolved under the industrial law as laid down by this Court. Firstly, there is what is called a production bonus or incentive wage [see Titaghur Paper Mills *vs.* Its Workmen, (1959) Supp. 2 S.C.R. 1012]: the second is bonus as an implied term of contract between the parties [see Messrs. Ispahani Ltd. *vs.* Ispahani Employees' Union (1960) 1 S.C.R. 24]; the third is customary bonus in connection with some festival [see The Graham Trading Co. *vs.* Its Workmen (1960) 1 S.C.R. 107] and the fourth is profit bonus which was evolved by the Labour Appellate Tribunal in The Millowners' Association, Bombay *vs.* The Rashtriya Mill Mazdoor Sangh, Bombay [(1950) 2 LLJ. 1247], and which has been considered by this Court fully in two cases. We are in the present case dealing with bonus of the fourth kind, namely, profit bonus."

The Supreme Court, in the course of its judgment, adverted to a fifth kind of bonus, namely, goodwill bonus. Dealing with the same, the Supreme Court has observed as follows:—

"As its very name implies, it is a bonus which is given by the employer out of his own free consent in order that there may be goodwill between him and his workmen; but there can be no question of imposing a goodwill bonus by industrial courts as imposition of such bonus is a contradiction of its very concept."

73. From the terms of reference it is clear that the dispute in the present case does not relate to production bonus or incentive wage or to bonus as an implied term of the contract between the parties, or to customary bonus in connection with some festival. It is a dispute in connection with profit bonus. Under the terms of reference, this Tribunal has only to deal with profit bonus. The concept of profit bonus has been discussed and set out by the Supreme Court in several cases. In Muir Mills Co. Ltd., *vs.* Suti Mills Mazdoor Union, Kanpur, (1955) 1 S.C.R. 991, the Supreme Court has pointed out as under:—

"There are however two conditions which have to be satisfied before a demand for bonus can be justified and they are, (1) when wages fall short of the living standard, and (2) the industry makes huge profits part of which are due to the contribution which the workmen make in increasing production. ** ** ** As both labour and capital contribute to the earning of the industrial concern, it is fair that labour should derive some benefit, if there is a surplus after meeting prior or necessary charges."

In the case of the Associated Cement Companies Ltd., *vs.* Its Workmen, reported in (1959) S.C.R., page 929 the Supreme Court has at pages 955 and 956 observed as under:—

> "..... the formula for awarding bonus to workmen is based on two considerations; first that labour is entitled to claim a share in the trading profits of the industry because it has partially contributed to the same; and second that labour is entitled to claim that the gap between its actual wage and the living wage should within reasonable limits be filled up."

74. The terms of the reference require that I should lay down principles and conditions under which bonus, *i.e.* profit bonus, should become payable and that I should specify the qualification for eligibility and the method of computation in connection with such bonus. There is an overriding provision that the same has to be done "after making provision for all matters for which provision is necessary by or under any of the Acts applicable to the banks or which are usually provided for by banks". My decision in connection with the dispute before me will, therefore, have to be limited by the concept of profit bonus as enunciated by the Supreme Court and the overriding provision referred to above.

75. The All India Bank Employees Association has contended that bonus is a deferred wage and that workmen working in an industry have a right to claim bonus over and above their stipulated wages where such wages fall short of the living wage standard, whilst the Bharatha Lakshmi Bank Ltd., has contended that it is only an *ex-gratia* payment. Bonus is neither an *ex-gratia* payment made by the employer to his workmen nor is to be regarded as a deferred wage. The broad idea underlying this concept is that capital invested by the employer and labour contributed by workmen jointly produce profits of an industry. The two-fold basis of the formula that labour is entitled to claim a share in the trading profits of an industry because it has partially contributed to the same and that labour is entitled to claim that the gap between its actual wage and the living wage should, within reasonable limits, be filled up, has always to be kept in mind. The claim made on behalf of the All India Bank Employees Association that so long as a living wage was not obtained, workmen have a right to claim bonus even in cases where the industry was making a loss, runs counter to the very concept of profit bonus enunciated above. It is implicit in the concept of bonus, which constitutes the subject matter of the reference, that its payment depends upon the making of profit and that when there is a loss, bonus cannot be claimed. This claim of the All India Bank Employees Association is therefore rejected. It is not necessary for me to determine whether any bonus would be payable where the goal of living wage has been attained. I have on the 7th June 1962 given my award in connection with the remuneration payable to the workmen of the banks which are before me, and the wage given under my award cannot be regarded as a living wage. It would be more proper to decide that question when a living wage has been attained. The Supreme Court has refrained from deciding that question in the case of the Standard Vacuum Refining Co. of India *vs.* Its Workmen and another, reported in (1961) 3 S.C.R. page 536, observing that no employer had till then succeeded in showing that a living wage standard had been reached and that the question may have to be considered on its merits if and when it arose in future.

76. The next question that is required to be considered in connection with bonus is whether profits should be ascertained industrywise or industry-*cum*-regionwise or, as the banks are grouped into various classes, classwise or unitwise. Banks which are parties to the reference are spread all over the country. The working funds, the areas of operation and the profit making capacity of the banks vary considerably and tribunals have in the past in the case of banking companies as defined in the Industrial Disputes Act, 1947 whilst dealing with industrial disputes given up the industrywise and industry-*cum*-regionwise approach. Under my award, dated 7th June 1962 in Reference No. 1 of 1960, while fixing wages for banking companies, including the banking companies which are parties before me in this reference, the industry basis or the industry-*cum*-region basis has not been adopted by me for the reasons given therein and banks have been divided into three classes according to their working funds, *viz.*, (i) Class A consisting of banks with working funds amounting to Rs. 25 crores and above and all Exchange banks, (ii) Class B consisting of banks with working funds amounting to Rs. 7½ crores and above but less than Rs. 25 crores, and (iii) Class C consisting of banks with working funds below Rs. 7½ crores. To the extent that bonus is intended to fill the gap between the actual wage and the living wage, it may be proper to consider banks according to the scales of wages prescribed. But the

wages paid is not the only factor to be taken into account in determining the amount of bonus. Another essential factor to be taken into account is the factor relating to profits. Profits are made unitwise and not industrywise. It cannot be said that the labour employed in one unit of the industry, namely, one bank, has contributed to the profits made by another unit in the industry, namely, another bank. The participation by labour in the process of making profit is one of the necessary ingredients for claiming bonus. For the purpose of considering profit, it would not be proper to pool the profits of various units of banks classwise, industry-*cum*-regionwise or industrywise. If the various units of the industry are banded together for the purpose of calculation of profits, it may be that units of the industry which have in fact made losses would be made to pay to their workmen bonus without having the funds from which to pay the same. The profits made by various units of the banks which are before me are not shared in common by the banks according to their class or having regard to the industry as a whole. The matter would have been different if the profits of various units of banks or of the banking industry as a whole were pooled together and distributed amongst the various units of the industry according to some formula evolved by them or by the legislature. So long as the concept of bonus remains what is and so long as the profits made by a bank are being retained by the bank and are not shared with other banks, it would not be proper to consider the profits of the banking industry as a whole or of any class of banks as a whole for the purpose of payment of bonus. So far as the 73 banks which are before me are concerned, each one of the banks makes its own profit. No bank shares its own profit with other banks. No bank contributes in any way to the payment of bonus by other banks. It may be desirable that there should be some standardisation of payments made to workmen in an industry, but the very concept of bonus is such that it eludes standardisation. Under the present economic system prevailing in the country, the only way in which the concept of bonus, as laid down by the Supreme Court, could be given effect to, is by considering the profit of each unit of the industry taken by itself. In the case of the New Maneck Chowk Spinning and Weaving Co. Ltd., Ahmedabad and others *vs.* the Textile Labour Association, Ahmedabad, reported in (1961) 3 S.C.R. page 1, the Supreme Court at page 15 observes as follows:—

> "As we have said already the basic concept of profit bonus, as it appears from the judgments of this Court, is that there should be an available surplus of profits in a particular concern in a particular year, to which the bonus relates and on this basis concept there is no scope for an approach on the basis of industry-*cum*-region in the matter of bonus in the sense that every mill in a region should pay the same bonus."

77. The next question to consider will be whether the profits that have to be taken into account should be the profits of any particular year or whether the profits of one year should to any extent be carried forward to another year so as to make the same available for payment of bonus during a lean year or a year in which there is a loss. The Supreme Court has, for the purpose of bonus, regarded each year as a separate self-sufficient unit and for the purpose of calculation and payment of bonus the profits of one year are not permitted to be appropriated towards the losses made in any previous year, or set apart to meet the losses which may be incurred in subsequent years and I will proceed to determine the dispute before me on that basis. Item (5) of the terms of reference to the Bonus Commission is intended to deal with the question afresh. The said item runs as under:—

> "To consider whether there should be lower limits irrespective of losses in particular establishments, and upper limits for distribution in one year and, if so, the manner of carrying forward profits and losses over a prescribed period."

There is no such claim made before me for carrying forward profits or losses and it is not necessary for me to consider the same.

78. The All India Bank Employees' Association has pleaded that in the banking industry, bonus cannot be related to trading profits but should be related to dividends. It is urged that the profit and loss account of banks as published, are fictitious and never reflect a correct picture of trading results in view of the protection given to the banking industry by the statute. It is no doubt true that the balance-sheets of banking companies are prepared differently from the balance-sheets of other companies governed by the provisions of the Companies Act, 1956. By section 29 of the Banking Companies Act, 1949, it is provided that at the expiration of each calendar year every banking company incorporated in India,

in respect of all business transacted by it, and every banking company incorporated outside India, in respect of business transacted through its branches in India, shall prepare with reference to that year a balance-sheet and profit and loss account as on the last working day of the year in the Forms set out in the Third Schedule or as near thereto as circumstances admit; provided that in the case of a banking company incorporated outside India, profit and loss account may be prepared as on a date not earlier than two months before the last working day of the year. Form B set out in the Third Schedule under the heading 'Profit and Loss Account for the year ended.....December.....' on one side provides for the "Expenditure" and on the other for "Income (less provisions made during the year for bad and doubtful debts and other usual or necessary provisions)". The banking companies are permitted by law to prepare balance-sheets in this form with a view to enable them to make provisions *inter alia* for what are known as secret or inner reserves without disclosing the same. Under the newly enacted section 34A of the Banking Companies Act, no banking company in any proceeding under the Industrial Disputes Act, 1947 or in any appeal or other proceeding arising therefrom or connected therewith, can be compelled by any authority before which such proceeding is pending to produce or give inspection of any of its books of account or other document or furnish or disclose any statement or information when the banking company claims that such document, statement or information is of a confidential nature and that the production or inspection of such document or furnishing or disclosure of such statement or information would involve disclosure of information relating to any reserves not shown as such in its published balance-sheets or any particulars not shown therein in respect of provision made for bad and doubtful debts and other usual or necessary provisions. The profit and loss account of banks as published cannot however be treated as fictitious. Section 30 of the Banking Companies Act, 1949, provides that the balance-sheet and profit and loss account prepared in accordance with section 29 shall be audited, in the case of a banking company incorporated in India, by a person duly qualified under any law for the time being in force to be an auditor of companies; and in the case of a banking company incorporated outside India, either by such an auditor as aforesaid, or by a person duly qualified to be an auditor under the law of the country in which the company is incorporated. The auditor is required, in the case of a banking company incorporated in India, to state in his report "whether the profit and loss account shows a true balance of profit and loss for the period covered by such account". The profit shown in the published profit and loss account of banking companies does not reveal the picture of profit for the year in question in the way in which the same is shown by the profit and loss account of other companies governed by the Companies Act, 1956. The industry of banking has its own needs. One of the needs felt by bankers and recognised by the legislature is that of providing secret or inner reserves. The profit made by a bank can only be ascertained after making provision for the same. These reserves are screened from public gaze. The shareholders cannot have a view of the same and so also the workmen.

79 Shri Sule has referred to some of the text-book writers on the subject in support of his contentions. In L. Cuthbert Cropper's book on "Higher Book-keeping and Accounts", 7th Edition, at page 65 it is stated as under:—

> "*Secret reserves.*—In the past, it has been the practice of Banks * * * * to accumulate reserves out of profits and not to disclose them in the accounts. This can be done by either: (a) charging capital expenditure direct to revenue, (b) providing excessive depreciation or even writing off fixed assets completely, either of which amount to very much the same thing as (a), (c) overstating liabilities, or (d) undervaluing current assets.
>
> The ethics of the practice of creating such reserves have been long and hotly debated in the past. Whatever its advocates may say, there can be no doubt that the creation of such reserves can lend itself, in unscrupulous or even in careless hands, to serious abuses, and has in fact done so in the past. * * * * It has so long been the accepted practice for institutions of this type to conceal their true financial strength by understating it in their published accounts. . . .".

In Davar's "Higher Accountancy" at page 527 it is stated as follows.—

> "Secret reserves could be created in various ways:—
>
> (1) Assets may be maintained at cost notwithstanding they have appreciated heavily.
>
> (2) Capital expenditure may be charged to revenue

(3) Assets may be unnecessarily heavily depreciated or eliminated altogether.

(4) Liabilities may be overstated by means of excessive reserves.

(5) Excessive provision may be made for contingencies.

(6) Stock may be undervalued.

* * * The secret reserve is known to the management only and is concealed from the shareholders and the general public. So long as this reserve is maintained for the good of the company and the management in so doing are acting *bona fide*, the practice is a sound one. However, it misguides the shareholders who are placed in a false position with regard to the value of their holding. Profit and loss account does not show true profits and balance sheet cannot be said to represent the true state of affairs and the system of secret reserve in the hands of unscrupulous management is open to much abuse."

In "Advanced Accounting" by Jamshed R. Batlibol, at page 621 it is stated as follows:--

"Secret reserves are technically improper, yet within certain limits, they are not only justifiable on the ground of expediency, but also of prudence. Nearly all Banks and financial institutions have their secret or internal reserves, and whether they are excessive can only be decided by an examination of their intentions. The justification for secret reserves is that directors sometimes experience a reluctance on the part of shareholders to deny themselves a full distribution of profits in order to form reserve funds and also a desire to average one year's profits with another. The equalisation of profits in this manner not only gives a business the impress of stability but helps to ensure a regular income to the shareholders. Secret reserves enable the business to meet extraordinary losses without the same being disclosed, and thus prevent the public confidence being shaken. They also serve to conceal huge profits in order to avoid rivalry."

My attention was drawn also to a passage in the decision of the Labour Appellate Tribunal in appeal from the Sastry Award, where it has been stated at page 158 as under:—

"For certain purposes the law may allow the parties to withhold certain particulars from the balance sheet, but for the purposes of an adjudication for bonus, the very nature of the enquiry as between employer and employees demands a full disclosure of essential information. It would be farcical to ask an adjudicator to decide the question of bonus and at the same time preclude an enquiry by him as to the true prosperity of the year."

These observations were made prior to the enactment of section 34A of the Banking Companies Act, 1949. The legislative provision in connection with bad and doubtful debts and other usual or necessary provisions is susceptible to abuse. This provision is not intended for building up reserves for distribution of bonus shares to shareholders and any abuse in this connection can be suitably dealt with, if necessary, by legislative action. Consistently with the requirements of secrecy the legislature by sub-section (2) of section 34A has provided certain safeguards by laying down that if in the proceeding referred to in sub-section (1) of section 34A in relation to any banking company other than the Reserve Bank of India, any question arises as to whether any amount out of the reserves or provisions referred to in sub-section (1) should be taken into account by the authority before which such proceeding is pending, the authority may, if it so thinks fit, refer the question to the Reserve Bank and the Reserve Bank shall, after taking into account the principles of sound banking and all relevant circumstances concerning the banking company, furnish to the authority a certificate stating that the authority shall not take into account any amount as such reserves and provisions of the banking company or may take them into account only to the extent of the amount specified by it in the certificate. It is further provided that the certificate of the Reserve Bank on such question shall be final and shall not be called in question in any such proceeding.

80. Even though there may be a possibility of some abuse the profit and loss account cannot be regarded as unserviceable for determining the claim for bonus. I have to determine the question of bonus having regard to the terms of reference which clearly provide for "making provision for all matters for which provision is necessary by or under any of the Acts applicable to the banks or which are

usually provided for by banks." The extent of profits made by a banking company will have to be ascertained within the limits permissible by law, having regard to the provisions contained in section 34A of the Banking Companies Act.

81. Shri Sule has claimed that bonus should be linked to dividend which would bypass these restrictions. A similar suggestion made before the Sastry Tribunal was opposed by a large majority of workmen though a few supported it but only as a last resort. The workmen's objection to the same then was that not infrequently, dividends were not declared even though enough profits had been earned to justify payment of dividends to shareholders as well as bonus to workmen. Payment of bonus is correlated to the making of profits in a particular year. The declaration of dividend is not necessarily correlated to the profits made during a particular year. Dividends may be declared out of past profits of a bank. Profits may be made by the industry and dividends may not be declared. Profits may be accumulated and bonus shares may be issued to the shareholders out of the accumulated profits or shares may be issued below par. Dividends may be declared by banks in order to maintain the dividends at a uniform level even though the profits of a particular year may not warrant the same. Large profits may be made by a bank during a year but the policy of having stable dividends may induce a bank to declare a dividend at a lower rate in order to conserve the profits for the purpose of maintaining the same level of dividends during lean years. There is no legal obligation on any bank to declare a dividend. The paid-up capital of a bank forms a small percentage of the total working funds of a bank. The paid-up capital of a bank may be doubled without there being a corresponding increase in the profits, with the result that such increase in the paid-up capital may result in reduction in the rate of dividends. As regards the Exchange banks, no separate dividends are declared in respect of business transacted through their branches in India.

82. The Sen Tribunal in showing that if bonus was linked to dividends the provisions of section 10(1)(b)(ii) of the Banking Companies Act, 1949, as it then stood, laying down that no banking company shall employ any person whose remuneration or part of whose remuneration takes the form of a share in the profits of the company, were not violated, observed as follows:—

> ".....a company has sometimes to declare a particular dividend owing to considerations not strictly related to the profit alone; for instance, a sudden declaration that no dividend can be paid may have serious consequences on the credit of such a delicate organisation as a bank; or for certain reasons the shareholders' hopes might have been pitched high (*e.g.*, by a return of the Excess Profit Tax or some other windfall) which it may not be expedient to disappoint; or it may be necessary to set aside a substantial part of large profits made in the year, in the form of a reserve, for particular purposes. In this connection the following remarks made by Mr. R. S. Sayers in his "Modern Banking" (Edition 1941) regarding the Bank of England's dividends are of interest: "The central bank must, therefore, always demonstrate that it is not incurring losses, even if it has been incurring losses. Accordingly it must never pass a dividend, and there is a strong case against ever reducing the dividend. If proper performance of its functions leads to its incurring losses, either it must cover them out of secret reserves or it must be helped by the Government." It would not, therefore, be proper to hold that dividend is necessarily a function (to use a mathematical term) of a bank's profits, although ordinarily the rule must be the greater the profits the greater the dividend. We, therefore, are of opinion that if we link bonus to the amount of the dividend that would not necessarily amount to giving an employee a remuneration which 'takes the form of a share in the profits of the company'.".

The Sen Tribunal linked bonus to dividends and there was considerable incongruity. Section 10 is now amended and it specifically provides that nothing contained in that section shall apply to the payment by a banking company of "any bonus in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual practice prevailing in banking business." There is no legal bar now in providing for bonus on that basis of a share in the profits of a company. It is not necessary to link bonus to dividends to overcome any legal bar. The Sastry Tribunal felt that there were "inherent defects" in such a formula. The Supreme Court, in the case of the Muir Mills Company Ltd., *vs.* Suti Mills Mazdoor Union, Kanpur, reported in (1955) 1 S.C.R., page 991 has observed at page 1000 as follows:—

> "Linking of bonus to dividend would obviously create difficulties. Because if that theory was accepted a company would not declare any dividends but

accumulate the profits, build up reserves and distribute those profits in the shape of bonus shares * * *."

83. Linking of bonus to dividends no doubt provides a simple formula for the award of bonus which would avoid recurring annual disputes. By and large, dividends are declared out of profits, though not necessarily of the same year. There are, however, fundamental objections to doing so. If bonus is linked to dividends, a year would no longer be a self-sufficient unit and payment of bonus given in a year would no longer be a payment made necessarily out of the profits of a particular year and in the making of which all the workmen concerned may have participated. The claim of workmen is liable to be circumvented by devices which may lawfully be adopted. In my view, the linking of bonus to dividend, though attractive at first sight by reason of the simplicity of the application of the formula, is opposed to the concept of bonus so far evolved and may not satisfy the claims of labour based on social justice. In spite of Shri Sule's strenuous arguments to persuade me to accept the same, I am unable to accede to that demand.

84. It is next urged that a minimum bonus equal to one month's pay must always be paid to workmen over and above their usual wages, irrespective of the question whether profits have been made or not, and even when a loss has been made. This demand is really a demand for increase in wages payable at the end of a year. It is contrary to the basic concept of bonus and is not granted.

85. I will next deal with the demand made by the Indian Banks Association that payment of bonus should not be made compulsory in the case of banks as in the case of other industries and that it should be left to the *bona fide* discretion of the management of the banks concerned. It has been urged that banking companies have their own peculiar features, that the earnings of the industry are to a large extent dependant upon the expert management of the finances of the bank in a profitable manner by the directors and top officers of the bank, that the usual notion of the workmen contributing to any appreciable extent in the earning of profits is inappropriate to banking companies, that in the industry of banking public interest is of paramount importance, that it is a key industry on which other industries depend and that the special treatment given to banks in the matter of presentation of its accounts and the privilege from certain disclosures conferred under section 28 and section 34A of the Banking Companies Act emphasise the special footing on which the legislature has intended to place this national industry.

86. The Bombay Exchange Banks Association has submitted that as a banking institution essentially renders service and depends for its prosperity on public confidence, on the efficient utilisation of its own funds as also other funds available to the bank and on the national and fiscal policies not only of India but also of other countries whose policies would have repercussions on the Indian economy, it would be wrong in principle to make it compulsory for banks to pay bonus out of the profits for any particular year in which there was a profit. It has further submitted that the clerical and the subordinate staff employed in banks perform routine functions, that the policies to be adopted by banks are laid down from time to time by the higher executives and are carried out by the management staff, that the usual concept of workmen having contributed to the earning of the profits is not applicable in the same way as in the case of workmen of a manufacturnig or a selling concern and that on this ground also it would be wrong in principle to make it compulsory for banks to pay bonus to workmen out of profits. It has further pleaded that the profits and financial conditions of the banking industry are matters of public and national concern and that the same is demonstrated by the fact that unlike other concerns, banks are permitted to build up secret or inner reserves and to make usual and necessary provisions out of profits without disclosing the same without demur from the shareholders or the public and that these secret reserves are not used for undisclosed distribution to shareholders or other private parties but are used to finance exceptional losses or years of unprofitable working, since disclosure of such losses can cause loss of faith in the credit on which the whole institution exists. It is pleaded that the building up of reserves and the husbanding of profits are essential for the continued existence of banks and for inspiring public support and public confidence and that in this respect, banks which are credit institutons are wholly different from manufacturing, selling and other commercial organisations and that the considerations which govern the grant of compulsory bonus by way of distribution of profits for a given year are totally inapplicable to any bank which must retain its profits as a condition of its survival and steady growth and that it is in

the above context that the Tribunal would consider whether on principle, banks should be required compulsorily to pay bonus out of profits to their workmen. It has submitted that it would be against principle to make banks pay compulsory bonus on any basis whatsoever. It has stated that the Exchange Banks have voluntarily been paying bonus to their employees, unrelated to the profits of any particular year, as a result of decisions taken by the directors of each of the Exchange Banks concerned and has assured that the American Express Co. Inc., the Bank of China, the Chartered Bank, the Comptoir National d'Escompte de Paris, the Eastern Bank Ltd., the First National City Bank of New York, the Hongkong and Shanghai Banking Corporation, the Mercantile Bank Limited, the National and Grindlays Bank Ltd., (including the Lloyds Bank Limited's former Indian Offices) and the Nederlandsche Handel-Maatschappij, N. V. (Netherlands Trading Society), will continue to pay such bonus voluntarily as may be sanctioned by the directors of the banks concerned.

87. A bank is a delicate instrument of credit and requires very careful handling. It thrives upon the confidence of the public. There are many factors, both national and international, which affect its working. It calls forth expert handling and management. Various facilities are granted to the industry like the building up of secret or inner reserves and the making of "usual or necessary provisions" out of income without disclosing the same. Privilege from certain disclosures is granted to it under section 34A of the Banking Companies Act, 1949. Nonetheless, it is an industry which is not above industrial law and workmen employed in it are entitled to the same consideration which the workmen in other industries are entitled to at the hands of Industrial Tribunals. Their needs are the same as those of other workmen and the principles of special justice are equally applicable to them. If anything, the industry being a key industry, it is more necessary than in the case of other industries that labour should be contented and peace should prevail in the industry and that the reasonable demands of workmen should be met and their just expectations should be fulfilled. The fundamental concept that bonus is required to be paid to bridge the gulf between the actual wage and the living wage where an industry makes large profits is applicable to them. Wages in the banking industry are below the level of the living wage. The industry is prospering and by and large substantial profits are made. The mere fact that the Full Bench formula as evolved may not be fully applicable in view of the fact that a bank is required to set apart a certain percentage of its profits to build up reserves upto a certain limit and is permitted, out of the income of any particular year, to provide for unforeseen liabilities and losses which might be incurred in future years and for other "usual or necessary provisions" without disclosing the same, does not render the claim for bonus nugatory. These are factors which are required to be considered when evolving principles and laying down the conditions under which bonus should be payable. It would make it all the more necessary that workmen should not have a feeling that there are no principles on which they can claim bonus as of right and that they are left to the sweet will and pleasure of the management for the receipt of bonus. It may be that a large number of banks may, in their own interest and in the interest of peace in the industry, consider it wise to pay bonus to workmen when large profits are made, but the claim of labour cannot rest merely upon the sense of propriety of the management. Principles are required to be evolved so that those who are good may continue to remain good and the erring may cease to err and act correctly. The question of bonus is a live issue between the bankers and their workmen and the same cannot remain unresolved and be left merely to the sense of fairness and the goodwill of one of the contending parties. The sense of fairness may not prevail to the same extent with all those who are in the management of the affairs of banks and principles have to be laid down which may be of general application and which may result in, as far as possible, similar treatment under the same or similar circumstances in all banks. It is also necessary to lay down principles governing bonus so that unfair or excessive demands may not be made and unjust expectations may not be roused which may remain unfulfilled and produce a sense of frustration. The concept of participation of labour in the making of profits has now been sufficiently crystallised by the Supreme Court. It has reference to the contribution made by workmen taken together as a class and so it would not be relevant to enquire which section of labour has contributed to what share of the profits. "The broad idea underlying this concept is that the capital invested by the employer and the labour contributed by workmen jointly produce the profits of an industry. This does not necessarily mean that in the industry in question labour must actually manufacture or produce goods, though in the case of manufacture and production of goods contribution of labour is patent and obvious". It may be that workmen in the banking industry may not contribute to the making of

profits to the same extent as they may do in other industries, but nonetheless, they do contribute to the making of profits.

88. In my view, it would be wrong in principle not to make it compulsory for banks to pay bonus when banks make large profits and there is a gap between the actual wages paid to workmen and the living wage.

89. I shall now deal with the question of the principles governing bonus and the conditions under which it should be payable and the method of its computation. The Full Bench formula as applied proceeds on the threefold concept referred to earlier, namely, that payment of bonus is dependent on profits, that profits must be considered unitwise and that each year should be considered as a self-sufficient unit. Under it, out of the adjusted profits, deductions have to be made by way of prior charges in respect of notional normal depreciation, taxes on income, return on paid-up capital, return on reserves used as working capital and provision for rehabilitation, replacement and modernisation. After making the deductions as aforesaid, the available surplus is arrived at whereout provision has to be made for the claim of the industry, the claim of the shareholders and the claim of labour, the saving of income-tax on account of the payment of bonus being taken into account.

90. The Full Bench formula in its entirely cannot be applied to the banking industry. Having regard to the protection afforded to the industry under the provisions of section 29 and section 34A of the Banking Companies Act, it is difficult to find out the precise gross profits of a particular year taken as a self-sufficient unit. The profits as disclosed in the balance-sheets of banks would be profits after making provision for secret or inner reserves and after making provision for bad and doubtful debts and for other usual or necessary provisions. Secret reserves are intended to provide for future and/or unforeseen contingent liabilities. They are intended to provide for lean years so that the level of dividends may be maintained. They are intended to absorb the shocks of periodic economic depressions. Undisclosed provisions made during the year for bad and doubtful debts and other usual or necessary provisions have to be allowed before arriving at the gross profits. The Supreme Court, in the Associated Cement Companies case, has laid down that there should be no increase in the items of prior charges provided under the Full Bench formula. Under the terms of reference, an increase in the items of prior charges would of necessity take place. Under the Full Bench formula, provision has to be made for income-tax and super-tax, payable on the adjusted profits arrived at in the manner required by the said formula. Under the Full Bench formula, the actual amount of tax payable by a company may not matter. The tax is notionally calculated. A company may have made losses during previous years and may not be liable to pay any tax, being entitled to set off against the profits of the year in question losses of the previous years which may have been carried forward. Income-tax may not, in fact, be payable by a concern, having regard to unabsorbed depreciation. Having regard to the provisions of section 29 and the Forms given in Schedule III of the Banking Companies Act, 1949, a banking company is under no obligation to disclose in its balance-sheet the amount provided by it for payment of taxes on income, and the undisclosed provision may have to be allowed in ascertaining the gross profits having regard to the provisions of section 34A of the Banking Companies Act, 1949. One of the matters for which provision is required to be made under the Banking Companies Act, 1949, is the one in connection with the reserve fund under section 17 of the Act. There are bound to be many inroads upon the Full Bench formula in its application to the industry of banking. An alternative must be consistent with the fundamental concept of bonus as understood in industrial law and as laid down by the Supreme Court and the limitations imposed by the terms of reference.

91. Having regard to the difficulties inherent in the situation, on the one hand a submission was made by the All India Bank Employees Association that I should reject the reference and direct the parties to appear and place their views before the Bonus Commission, and on the other hand it was submitted by the Indian Banks Association and by the Bombay Exchange Banks Association that I should leave the matter to the banks concerned. I have already dealt with these arguments in the earlier part of my award. The Full Bench formula is not a rigid formula and even in the peculiar circumstances affecting the banking industry and within the limits of the terms of reference, may still serve for calculating bonus in the banking industry, if suitably modified an applied and if the available surplus is suitably dealt with having regard to the extent to which the claims of some of the sharers have already been provided for.

92. I shall deal first with the question how the adjusted gross profit is to be arrived at from which various prior charges have to be deducted. As a general rule, in other industries the amount of gross profit as shown in the balance-sheet is accepted without submitting it to close scrutiny. If entries have been made on the debit side deliberately and *mala fide* to reduce the amount of gross profit, it is open to the tribunal to examine the question, and if it is satisfied that the impugned entries have been so made it may disallow the same. It is open to the parties to claim exclusion of items either on the credit side or the debit side on the ground that the impugned items are wholly extraneous and entirely unrelated to the trading profits of the year. Extraneous income may be due either to some part of the profit not having been earned in that year or to some part of the profit arising out of fortituous circumstances altogether unconnected with the effort of labour or may be income arising out of the sale of fixed capital assets. The Supreme Court has in the case of the Associated Cement Companies *vs.* Its Workmen, reported in (1959) S.C.R., page 925 observed at page 957 that—

> "the tribunal must resist the temptation of dissecting the balance-sheet too minutely or of attempting to reconstruct it in any manner. It is only in glaring cases where the impugned item may be patently or obviously extraneous that a plea for its exclusion should be entertained. ** ** ** In such matters, the tribunal must take an overall, practical and commonsense view."

The actual provision made for depreciation is added back. Bonus, if any, paid or provided for in respect of the previous years or the year in question is also added back. Debit entries relating to previous years, donations, charities, provision for gratuity fund, etc., are also added back. The actual provision for taxation made is added back and the amount of tax on adjusted profit is worked out notionally and is subsequently deducted as a prior charge.

93. In the industry of banking what is stated above will apply subject to the modifications stated below. The "provision made during the year for bad and doubtful debts and other usual or necessary provisions" will have to be allowed even though some of the provisions may not relate to the year in question taken as a self-sufficient unit. The banking companies are under no obligation to disclose the same in their published profits and loss accounts and the provisions are protected from discovery to the extent provided in section 34A of the Banking Companies Act. These would include secret or inner reserves. The only safeguard will be that provided by section 34A(2). Some banks may not claim privilege and disclose all the provisions made for which privilege could have been claimed. Merely because they do not claim privilege, they cannot be put in a disadvantageous position. Where such disclosure is made the Tribunal will have to play a role similar to that played by the Reserve Bank of India under the provisions of section 34A(2) so that such banks may be put on a position similar to that occupied by other banks.

94. Having regard to the fact that the provision for taxes on income is one of the items which falls within the words "other usual or necessary provisions", a number of banks do not in fact disclose the provision made by them in connection with taxes on income. There are however banks which do disclose this provision. Generally speaking there are three different ways in which the matter is dealt with by banks. In some cases, in the profit and loss account no mention is made at all of any provision for taxes on income but in the directors report only an indication is given that the figure of profit of the year is arrived at after making allowance for taxation. This will be seen from the profit and loss account and directors report of the Allahabad Bank Ltd. for the year 1960. In some cases, in the profit and loss account on the expenditure side provision is made for taxation. The profit and loss account of the Central Bank of India for the year 1960 illustrates this. Even in this class of cases, such disclosed provision is made after taking into account the tax deducted at the source which remains undisclosed in respect of income like interest on securities and dividends from companies. In other cases in the profit and loss account the balance of profit is shown "subject to taxation" and in the directors report the amount set apart as provision for income tax and super tax for the year is shown. The directors report and profit and loss account of the Bank of India Limited for the year 1960 brings this out. Even in such cases the disclosed provision is made after taking into account the tax deducted at the source which remains undisclosed. From the published balance-sheets and profit and loss account and the directors report of banking companies it would be difficult in the case of most of the companies to find out the tax liability for any year. It was urged on behalf of some of the banks that auditors are required to state in respect of banking companies incorporated in

India, under section 30 of the Banking Companies Act, that the profit and loss account shows a true balance of profit and loss for the period covered by such account. At the hearing of the reference when Shri Palkhiwala, the learned counsel for the Bombay Exchange Banks Association, was arguing the matter, on a question put by me, after enquiring from Shri Raiji of Messrs. N. M. Raiji & Co., Chartered Accountants of Bombay, intimated to me that whenever in the profit and loss account itself a provision for taxes is made, the auditors have to go into the question whether the provision is too much or too little because they have to certify that the profit and loss account presents a true and correct picture. If, however, the provision for taxes appears in the profit appropriation account, the auditor would be concerned if the provision is too little but not if it is too much because in such a case, the profit and loss account would not be affected. All the aforesaid three methods are legally permissible. There is nothing to prevent any bank in future from switching over from one method to another.

95. Having regard to the terms of the reference and taking everything into consideration, I direct that as regards banks whose profit and loss account does not disclose any provision for taxes on income, there will be no amount added back to the disclosed profit on account of taxes on income and there will be no deduction subsequently made in respect of the notional taxes on income represented by the adjusted profits. As regards banks which have disclosed the provision made for taxes on income in the profit and loss account, they may still not have disclosed the amount of tax deducted at the source for which the banks are entitled to claim credit whilst paying taxes. Even in a given case where a full disclosure has been made in respect of the provision for taxes in the profit and loss account including the tax deducted at the source, the banks doing so cannot be placed in a disadvantageous position by reason of such disclosure. In the case of all those banks also there will be no amount added back to the disclosed profits on account of taxes on income and there will be no deduction subsequently made in respect of the notional taxes on income represented by the adjusted profits. As regards the third type of banks which show the profit subject to taxation in the profit and loss account and disclose the provision made for taxes on income whilst appropriating the profit, the actual provision made for tax on income should be deducted from the profit shown in the profit and loss account, and subsequently there will be no deduction in respect of the notional taxes on income represented by the adjusted profits. All the aforesaid provisions will, however, be subject to the safeguards provided by section 34A(2) of the Banking Companies Act, 1949, and any adjustments that may have to be made in the light of any certificate issued by the Reserve Bank of India. Where, however, no privilege is claimed by any bank and full disclosure has been made, the Tribunal will have to play a role similar to that played by the Reserve Bank of India under section 34A(2) and the requisite adjustment may be made in the same way and to the same extent as it would have been done if a privilege from disclosure had been claimed and a certificate had been issued by the Reserve Bank of India. The adjusted profits will have to be arrived at in the manner aforesaid.

Prior Charges

96. The amount which is required to be compulsorily set apart by a bank by way of reserve fund out of its profit under the provisions of section 17 of the Banking Companies Act, 1949, should be allowed as a prior charge. Under the provisions of the said section, out of the balance of profit of each year as disclosed in the profit and loss account prepared under section 29 and before any dividend is declared, a banking company incorporated in India is under an obligation to transfer to the reserve fund a sum equivalent to not less than 20 per cent. of such profit until the amount in the reserve fund together with the amount in the share premium account equals the paid-up capital of the bank. It is open to a bank to transfer to the reserve fund an amount in excess of 20 per cent. of such profit and to do so even if the amount standing to the credit of the reserve fund exceeds the amount of the paid-up capital. The provision here made is restricted only to the extent to which it is obligatory on a bank to make such transfer to the reserve fund.

97. On 27th December 1961, the Governor of the Reserve Bank of India addressed a letter to all Indian Scheduled Banks in which it is stated as under:—

> "In the last ten years while the deposits of banks have risen substantially there has not been any material increase in their capital and reserves—with the exception of the compulsory appropriations to the reserve funds

required under existing legislation in the case of banks, the reserve funds of which are less than their paid-up capital—with the result that the ratio of paid-up capital and reserves to deposits of scheduled banks has steadily declined from 9 per cent. in 1950 to 5 per cent. in 1960.

The existing provisions with regard to minimum capital and reserves as well as transfers to reserves out of annual profits in the Banking Companies Act are of a minimal character which were introduced in the then prevailing context; the chief objective then was to raise the standard of performance of several sub-standard banks which had come into existence during the War years. In the altered circumstances of today, higher operational standards than those stipulated in 1949, have become imperative. Even in advanced industrial countries, with well developed banking systems, there has always been a conscious and concerted effort to get the shareholders' money in business into a proper trading relationship to their deposits; the ratio of capital funds to deposits of banks abroad has generally been on the increase in the last decade. Taking this and other relevant factors into account, I consider that banks in India should aim to achieve a ratio of 6 per cent. of capital funds (comprising paid-up capital and published reserves) to deposits. * * * * * A number of banks expressed to me a specific preference for an informal agreement rather than legislation or directives in this regard. I agree that there is a great deal to be said for preferring a pattern of conventions which banks will be expected to follow. I shall, therefore, be glad if in respect of transfers to published reserves banks will observe the following conventions:

(i) Where the published reserves of banks are equivalent to or more than their paid-up capital, irrespective of what is said in Sections 11 and 17 of the Banking Companies Act, they should transfer at least 20 per cent. of their declared profits (that is to say, profits after making usual and necessary provisions) to their published reserves till such time as their published reserves and paid-up capital reach a level of at least 6 per cent. of their deposits.

(ii) Where the reserves of banks have not reached parity with their paid-up capital, they should *continue* to transfer 20 per cent. or more of their disclosed profits till—

(a) the reserves are at least equal to the paid-up capital *and*

(b) the ratio of paid-up capital and published reserves to total deposits is at least 6 per cent."

In a letter dated 6th January 1962, addressed by the Deputy Economic Adviser of the Reserve Bank of India to the Secretary, Indian Banks Association, it was stated as under:—

"At present, the banks prepare their Balance Sheet and Profit and Loss Account as provided for in Section 29(1) of the Banking Companies Act, the forms of which are set out in the third schedule to the Act. According to this proforma, banks draw up their Profit and Loss Account after making provisions during the year for bad and doubtful debts and other usual or necessary provisions. While some banks include under the latter provisions, tax provision also, others show tax provision as a separate item as an appropriation of profit. In para. 5(1) of Governor's letter, the banks are requested to transfer at least 20 per cent. of their declared profits (*i.e.* profits after making usual or necessary provision) to their published reserves.

It was intended that in arriving at the declared profits the banks should follow a uniform practice in the matter of disclosing their profits *vis-a-vis* the provision for taxation. In the meeting which the banks' representatives had with the Governor on 17th November 1961 it was stated that banks were working out a uniform practice in this matter by preparing a proforma in consultation with their auditors. We await receipt of the proforma from your Association in due course."

In a letter dated 25th January 1962, addressed by the Executive Director of the Reserve Bank of India to all Indian banks, it is stated as under:—

"2. Certain banks have already reserves which are equal to or exceed their paid-up capital. The intention is that such banks should transfer not

less than twenty per cent. of their disclosed profits arrived at after making the usual and necessary provisions and after deduction of the provision for taxation.

3. There are several banks the reserves of which are not equal to their paid-up capital. The intent of the Governor's letter is that such banks should, till they reach parity of paid-up capital and reserves, follow the same basis of computation as they observed in their Profit and Loss Account for 1960. That is to say, if they computed transfers to reserves on profits *before tax* they should continue to do so till parity is reached.

4. It may happen that banks which have reached parity of paid-up capital and reserves will, by reason of an increase of their paid-up capital, come under the legal obligation to make transfers to their reserves under section 17 of the Act. Such banks would be permitted to compute their disclosed profits for the purposes of such transfer, after making the usual and necessary provisions and after deduction of the provision for taxation."

98. In order to comply with the provisions contained in section 17 of the Act, it is not obligatory on any banks to calculate profits without making a provision for taxes on income. The convention sought to be established by the Reserve Bank of India is a healthy convention in the interest of the banking industry. Taking everything into account, I am of the view that for the purpose of calculation of bonus, if a sum equal to 20 per cent. of the profit referred to in section 17 after making provision for taxes on income is transferred by any bank to the reserve fund in order to comply with the provisions of section 17 or in order to act in accordance with the convention sought to be established, it should be allowed as a prior charge and I direct accordingly.

99. The next item to be provided out of the adjusted profits is the item relating to depreciation. Under the Full Bench formula, what is liable to be deducted is notional normal depreciation. There is no dispute as regards what is required to be deducted under this head. The Supreme Court in the case of the Associated Cement Companies Limited and another *vs.* Its Workmen, reported in (1959) S.C.R., page 925, has stated that depreciation which has to be deducted from the gross profits should be the notional normal depreciation as explained in the case of The Surat Electricity Co. Ltd. (1957) 2 LLJ., page 648, and should not include initial and additional depreciation allowable under the Income-tax Act and I direct accordingly.

100. The next item of prior charge to be considered is the one relating to return on paid-up capital. The Full Bench formula provided generally for the payment of interest at 6 per cent. per annum on the paid-up capital and 2 per cent. on working capital. Subsequent decisions show that the Tribunals have not regarded the said rates as inflexible and have considerably modified them in the light of the relevant circumstances in each case. The Supreme Court has in the case of the Associated Cement Companies Ltd., *vs.* Its Workmen, reported in (1959) S.C.R., page 925 at page 962 approved this method of approach of the Tribunals as the correct approach and has stated that it is necessary to fix the rate of interest on the two items of paid-up capital and working capital according to the circumstances of each case. It has also added that ordinarily Tribunals award interest at the rate of six per cent. per annum on paid-up capital.

101. Shri Palkhiwala, the learned counsel on behalf of the Bombay Exchange Banks Association and Shri Phadke, the learned counsel for the Indian Banks Association, urged that the scheme of taxation had changed considerably since the time when the Full Bench formula was evolved and that in order to place a shareholder in the same position which he occupied in the year 1949 when he received a dividend of 6 per cent. it is now necessary to provide a dividend of 8·4/7 per cent. or 8·57 per cent. Shri Palkhiwala as well as Shri Phadke further contended that in the banking industry the return on the paid-up capital should be 12 per cent. in the context of the conditions prevailing in the country. It was urged that there was an upward trend in the yield of dividend on equity shares as well as on preference shares and that what was considered as a fair return in 1949 could not be considered to be a fair return today. It was urged that in the year 1949 fixed deposits yielded 2 per cent. interest whereas now they yield four per cent. interest. It was further urged that in the banking industry there was no scope for capital growth as in other industrial concerns and that the equity shareholders should be provided with a larger return than the preference shareholders as the preference shareholders were secured whilst the equity shareholders

were not similarly secured. The All India Bank Employees Association on the other hand has pleaded that the return on paid-up capital should be less than the usual return allowed in bonus cases for other industries and should never be more than 4 per cent. Shri Sule, the learned Advocate on behalf of the All India Bank Employees Association has contended that in non-banking concerns the paid-up capital was fixed whilst in banking concerns it was circulating and that the risk to paid-up capital in banking concerns was much less than in non-banking concerns. Shri Dudhia, the learned Advocate on behalf of the All India Bank Employees Federation submitted that in the banking industry less than six per cent. should be allowed by way of return on the paid-up capital, that the element considered by Tribunals in fixing the return on paid-up capital was the element of risk and that in the case of a manufacturing industry the element of risk was greater as the paid-up capital was sunk in fixed block whilst in the banking industry, the paid-up capital was not so sunk.

102. In considering the return on paid-up capital two factors have to be taken into account. The return on paid-up capital has to provide for interest on the capital involved. It has also to provide for compensation for the risk involved in business. In the banking industry the capital of a bank is not wholly sunk in fixed assets. Fixed assets, however, may be regarded as more stable than fluid assets. There is risk to paid-up capital in the business of banking as well as in other industries and no difference in the return on the paid-up capital can be made on that account. A Tribunal concerned with the question of bonus in every case has to consider the circumstances in connection with each bank which comes before it while dealing with the question of return on paid-up capital and reserves used as working capital.

103. No doubt, the taxation policy has changed to the detriment of the shareholders. The substance of the changes effected as stated by Shri Palkhiwala in brief are the following:— Prior to 1959 under the scheme of the Indian Income-tax Act, 1922, a company paid income tax and super tax on its own profits but the income tax, though not the super tax paid by the company on its own profits was by fiction of law deemed to be paid by the company on behalf of the shareholder and the shareholder got credit in his assessment for the income tax so paid by the company on its own profits. The company was also assessable to wealth-tax on its own assets under the Wealth Tax Act, 1957. In 1959, the scheme was changed. The shareholder does not now get credit for income tax paid by the company on its own profits. To compensate for this heavier burden of taxation the rates of taxation on companies have been reduced and the companies have been exempted from the burden of Wealth-tax. As companies have now to pay a smaller amount by way of taxes, the profits available for the purpose of distribution correspondingly increase. The shareholders whose income is subject to payment of income tax will, however, have to pay income tax on the dividend declared by a company. The reduction in the rates of tax on companies and the abolition of wealth-tax on companies is however not enough to compensate the shareholder fully for the abolition of the credit to the shareholder in respect of the income tax paid by the company on its own profits.

104. Even prior to the change effected in the taxation scheme the shareholder got the benefit on account of income tax to the extent that the company had paid the same. Where a dividend was declared out of the profits not included in the total income of the company like profits of earlier years or out of any income which was not subject to income tax or out of any amount attributable to any allowance made in computing the profits of the company, the shareholder got no benefit. The changes effected in the scheme of taxation are not confined to banking companies but are applicable to companies in general whether they transact the business of banking or any other business. So far, the only case in which a change has been made in the rate of return on paid-up capital on account of the change in the scheme of taxation is the case of Alcock Ashdown & Co. Ltd. *vs.* The Engineering Mazdoor Sabha, reported in 1961 Industrial Court Reporter, page 321. In that case Shri M. R. Meher allowed a taxable return of 7½ per cent. on paid-up capital which worked out to a net dividend of 5·25 per cent. It may be mentioned that in that case even if a return of 6 per cent. subject to tax was allowed, there would have been no available surplus but a deficit. The provision made under the Full Bench formula by way of a return on the paid-up capital is not intended to provide all that the shareholders can get by way of dividend. The shareholders can also look to the interest allowed on reserves used as working capital and on the available surplus for the satisfaction of their needs by way of dividend. In the banking industry unlike other industries reserves have to be built up compulsorily upto a certain limit and reserves are required to be provided under the convention sought to be established by the Reserve Bank of India. These reserves would be considerable and the return allowed thereon would also

be available for the benefit of shareholders of banks. Having regard to the peculiar circumstances concerning the banking industry and taking all factors including the exhibits filed before me and the arguments advanced before me, into account, I am of the view that generally speaking a return of six per cent. should be provided on the paid-up capital, the detriment suffered by the shareholders by reason of the change in the policy of taxation being taken into account whilst distributing the available surplus, and I direct accordingly.

105. It was urged that bonus share capital should be allowed a return of 2 per cent. only and not more. Once bonus shares are issued which rank for dividend like ordinary shares the market rate for these shares is the same as that of ordinary shares and no distinction can be made between the holders of bonus shares and other shares. There is no reason to differentiate bonus share capital from ordinary share capital. There however cannot be any rigid rule in this connection.

106. The next item of prior charge relates to the return on reserves utilised as working capital. The All India Bank Employees Association has submitted that a return of not more than 2 per cent. should be allowed on "reserves in excess of the reserves required under the Banking Companies Act only when actually used as working capital during the year". It is further submitted that "depreciation reserves should not be permitted any return even though such a reserve may be available and may have been used as working capital". No distinction can be made in respect of reserves used as working capital having regard to the sources from which they are drawn. The argument advanced in this connection runs counter to the decision of the Supreme Court on the point and the well settled law on the point. "We think it is common sense", observed the Supreme Court in the Associated Cement Companies case reported in 1959 Supreme Court Reports, page 925 "that if the concern utilises liquid funds available in its hands for the purpose of meeting its working expenses rather than borrow the necessary amounts, it is entitled to claim some reasonable return on the funds thus used."

107. Shri Palkhiwala on the other hand contended that reserves used as working capital should be treated on the same footing as paid-up capital for the purpose of providing a return thereon. He urged that all the working capital of banks is exposed to the same risk as its share capital, that the reserves of banks are frozen profits and constitute the very core of the institution, that in the case of ordinary concerns, reserves used as working capital only take the place of borrowed capital and such reserves may be distributed by way of dividend to shareholders, that in the case however of the banking industry, the building up of reserves is essential for the stability of the institution and the reserves are treated as part of the working capital of the banks, that a statutory obligation is imposed upon banks to maintain reserves while no such obligation is cast upon non-banking companies, that since banks have compulsorily to build up reserves until the reserves equal the paid-up capital, the shareholders would not get enough return on their holdings until such reserves are built up and the shareholders should be compensated by a larger dividend in later years, that banks have not merely to provide for statutory reserves but have to keep substantial other reserves known as secret or inner reserves, that a higher return should be allowed on disclosed reserves to compensate for the absence of return on secret reserves and that the Sastry Tribunal having considered all aspects of the matter in para. 561 of its award, had recommended that six per cent. return should be allowed on both paid-up capital as well as on reserves and that in the banking industry no distinction should be made for the purposes of return between paid-up capital and reserves. In the alternative, it was contended that to the extent of the statutory reserves, the same return should be allowed as on paid-up capital because statutory reserves could not be withdrawn.

108. The use of reserves as working capital in a non-banking industry depends upon the wishes of the company. A non-banking company is under no obligation to maintain any reserves and may have the moneys lying in the reserve fund distributed amongst the shareholders. In the banking industry, statutory reserves have to be compulsorily provided. These reserves, however, are necessary for the stability of the institution of banking. They inspire confidence in the depositors attract more business and conduce to larger profits. There reserves in the results are equally beneficial to the shareholders. In considering the question of return on reserves used as working capital, the Labour Appellate Tribunal in the case of the Millowners' Association, Bombay *vs.* Rashtriya Mill Mazdoor Sangh, reported in (1950) 2 LLJ., page 1247 has observed at page 1254 as follows:—

> "The paid-up capital, however, runs a double risk, *viz.* (1) normal trade risks, and (2) risks incidental to trade cycles; whereas in the case of the reserves employed as working capital which is more liquid than fixed capital the incidence of risk to which it is subject is rather small.

So the fair return on reserves employed as working capital must necessarily be much lower than the fair return on paid-up capital."

This argument would not be available in connection with statutory reserves to the same extent as in the case of reserves in other industries. Some banks may maintain reserves in excess of those statutorily required to be maintained. There might be reserves which might be required to be maintained having regard to the convention sought to be established by the Reserve Bank of India referred to earlier. There might be reserves provided in excess of that convention by banks. The rate of return in respect of reserves required to be maintained either under section 17 of the Banking Companies Act or by reason of the convention sought to be established by the Reserve Bank of India, which have been used as working capital, cannot be the same as the rate on reserves which it is not obligatory to maintain as aforesaid and which the bank may have used as working capital. Suffice it to say that a slightly higher return than the one given in other industrial concerns is called for in respect of statutory reserves and reserves required to be maintained under the convention sought to be established as aforesaid used as working capital. These reserves, however, cannot be equated with paid up capital. It is not possible to lay down what exact percentage of return should be allowed. As observed by the Supreme Court in the Associated Cement Companies case, the rate will vary according to circumstances of each case and interest has to be allowed according to relevant circumstances. Speaking generally, if four per cent. return is allowed on the reserves used as working capital other than statutory reserves and reserves required to be maintained under the convention sought to be established by the Reserve Bank of India, 4½ per cent. return may be allowed on statutory reserves and reserves required to be maintained under the aforesaid convention.

109. The next item of prior charges that will have to be considered is the provision for rehabilitation, replacement and modernisation. The All India Bank Employees Association has pleaded that "no provision for rehabilitation, should be allowed on buildings and other fixed assets in the banking industry". There is no reason why the banking companies should be treated differently from other companies in this respect and the claim is rejected. The provision required to be made for rehabilitation, replacement and modernisation in the banking industry would not be very great as compared to other industrial concerns. The demands for rehabilitation, replacement and modernisation will relate mainly to buildings, safe deposit vaults, air conditioning plants, accounting machines, etc I direct that the principles in this connection laid down by the Supreme Court in the Associated Cement Companies case reported in 1959 S.C.R. page 925 should be followed. It is now well settled that provision for rehabilitation, replacement and modernisation would not cover a provision for expansion. After making the aforesaid deductions for prior charges from the adjusted profits, the available surplus would be arrived at.

Available surplus

110. Ordinarily, there are three claimants claiming a share in the distribution of the available surplus, *viz.* (1) industry, which claims a share for the purpose of its stability, expansion and other needs, (2) shareholders, who claim a share by way of additional return on capital invested by them, and (3) labour, claiming bonus As regards the claim of the industry, Shri Palkhiwala has strongly urged that half of the available surplus should be set apart (1) for the credit and development of the banking institution, (2) for the security of the depositors, and (3) to effectuate compliance with legal provisions and banking conventions. He submitted that in the banking institution there cannot be large bonuses as there could be in industrial institutions. He urged that after setting apart 50 per cent. of the available surplus as aforesaid in the balance both labour and shareholders are entitled to a fair share. He urged that there were other considerations which had to be borne in mind before a share was given to workmen, such as liability for gratuity and pension fund. He stated that in the banking industry, if any bank skipped paying dividends for a year or two, there would be a run on the bank. Therefore, a dividend equalisation fund would have to be maintained. Shri Phadke on behalf of the Indian Banks Association adopted the arguments advanced by Shri Palkhiwala. He stated that the factors to be considered were (1) the extent to which a particular bank was away from the required level of reserves both under section 17 of the Banking Companies Act, 1949 and under the convention, and (2) the liability in respect of gratuity, even if no fund was created by the bank. He urged that there could be no hard and fast rule regarding the division of the available surplus. He stated that 40 per cent. of the available surplus may

yield a large bonus in the case of one bank and low bonus in the case of another Shri Sule, on behalf of the All India Bank Employees Association, contended that the claim of the industry should be rejected *in limine* as the industry had fortified itself by building secret or inner reserves and by refusing to disclose some of the necessary items Shri Sule urged that if the suggestions of Shri Palkhiwala were given effect to, there would be nothing left for the workmen by way of bonus Statements were filed taking the figures of profits of leading Indian banks for the year 1960 to show the same Shri Sule pointed out that most of these banks had made provisions for payment of bonus for the year 1960 Shri Sule forcefully urged that the reference was not made by way of punishment to the workers so as to deprive them of the bonus which they were getting by reason of any principles or method of computation that may be evolved Shri Dudhia on behalf of the All India Bank Employees Federation urged that the depositors and the industry were provided for under the usual provisions made by banks that the available surplus must be divided between the shareholders and the employees and that the depositors and the industry should not be allowed to reduce the surplus any further In the Associated Cement Companies' case, reported in (1959) S C R page 925, the Supreme Court has observed at page 973 as under —

> "The ratio of distribution would obviously depend upon several facts What are the wages paid to the workmen and what is the extent of the gap between the same and a living wage? Has the employer set apart any gratuity fund? If yes, what is the amount that should be allowed for the bonus year? What is the extent of the available surplus? What are the dividends actually paid by the employer and what are the probabilities of the industry entering upon an immediate programme of expansion? What dividends are usually paid by comparable concerns? What is the general financial position of the employer? Has the employer to meet any urgent liability such as redemption of debenture bonds? These and similar considerations will naturally determine the actual mode of distribution of the available surplus. * * * * The fact that the employer would be entitled to a rebate of income-tax on the amount of bonus paid to his workmen has to be taken into account and in many cases it plays a significant part in the final distribution"

These general considerations apply to the banking industry in considering the question of the distribution of the available surplus As regards the claim of the industry for its stability, expansion and other needs, provision has already been made by directing that out of the adjusted profits deduction should be made in respect of 20 per cent of the profits of the banking company as disclosed in the profit and loss account prepared under section 29 which have been transferred to the reserve fund under section 17 or been added to the reserve fund under the convention sought to be established by the Reserve Bank of India Shri Palkhiwala, however, contended that industry's need for expansion is not to be equated with the security of the depositors, that the contribution to reserves had to be made for the security of the depositors and that the need for expansion had to be provided for The provision made as aforesaid is both for the security of the depositors as well as for the expansion of the industry In addition to the published reserves there are secret or inner reserves for the protection and stability and other needs of the industry The industry is thus provided for in a fair measure. The claims of the industry are however, not totally ruled out It may be that special needs of the industry may have to be provided for in a given year. One cannot contemplate all the varieties of circumstances which may occur in the future A tribunal dealing with the question will bear them in mind whilst distributing the available surplus In every case the extent to which the industry is already provided for will have to be taken into account. As regards the claims of the shareholders, the shareholders would be getting not merely the interest provided for them by way of return on paid-up capital, but would benefit by the return provided in connection with reserves used as working capital Money is the stock in trade of banks and reserves would ordinarily be used as working capital The building up of reserves is obligatory upto a limit in the banking industry and is further required to be done under the convention sought to be established The extent of the reserves which have been built up and the return provided thereon would have to be taken into account by tribunals whilst distributing the available surplus In distributing the available surplus the reduction in income tax by reason of the payment of bonus will have to be taken into account In this connection, however, it will have to be borne in mind that where appropriation for payment of bonus has been made in the balance-sheet and directors report, the reduction in the amount of tax payable by reason thereof to that extent is generally taken into account by banks whilst making a provision for tax on income In view of the provisions made as aforesaid under the scheme as evolved, generally

speaking, labour in the case of a number of banks will become the major claimant. The term labour will cover both workmen and non-workmen.

111. In the course of the hearing, there was a discussion in connection with imposing a ceiling on bonus. Shri Phadke suggested that there should be a ceiling on bonus. This suggestion was not acceptable to any of the employees' organisations. In my view, there is no necessity of imposing any ceiling on bonus. The Supreme Court, in the case of the Standard Vacuum Refining Co. of India *vs.* Its Workmen and another, reported in (1961) 3 Supreme Court Reports, page 536, at page 561 has stated that in its opinion it would be inadvisable and inexpedient to put a ceiling in the matter of awarding bonus. In this connection the further observations of the Supreme Court in the aforesaid case may well be borne in mind.—

> ".... ....unreasonably high or extravagant claims for bonus cannot be entertained just because the available surplus would justify such a claim. As has been observed by the Labour Appellate Tribunal in Burmah-Shell Oil Storage and Distributing Co. of India Ltd., Bombay *vs.* Their Workmen [(1953) 2 LLJ. 246] care must be taken to see that the bonus which is given is not so excessive as to create fresh problems in the vicinity that upset emoluments all-round or that it creates industrial discontent or the possible emergence of a privileged class. The impact of the award of bonus in an industrial dispute on comparable employments or on other employments in the region cannot be altogether ignored, though its effect should not be over-estimated either."

112. The formula as evolved in order to satisfy the requirements of law relating to banking companies and the limitations imposed by the necessities of the situation and the terms of the reference is sufficiently elastic to meet the just claims of labour if what is implicit in the formula as evolved is kept in view and given effect to. The Tribunal dealing with the question of bonus for a given year will have to attempt to do justice between the parties without some of the relevant matters being disclosed to the tribunal. Such a procedure may not appeal to a judicial mind. Non-disclosure of these matters has become necessary for the maintenance of this delicate instrument of credit in the larger interests of the public and the best that is possible will have to be done within the limitations imposed by law and public policy.

Exchange Banks

113. As regards the Exchange Banks, Shri Palkhiwala submitted that there were some special considerations applicable to the Exchange Banks. They have no specific paid-up capital or reserves for India. The Exchange Banks have been incorporated abroad and they have reserves which have been built up out of their global profits. The question will arise as regards the amount of paid-up capital and the amount of reserves on which return is to be allowed. For this purpose Shri Palkhiwala suggested that return should be allowed on such amount of capital and on such amount of reserves as bear to the total paid-up capital and to the total disclosed reserves respectively the same ratio which the Indian working funds bear to the world working funds of the banks concerned. The aforesaid suggestion is fair and reasonable and the same proportion which the Indian working funds bear to the world working funds should be adopted for the purpose of determining the proportion of capital and reserves on which return should be allowed in the case of the Exchange Banks.

114. The next question that arises for consideration is whether in respect of 20 per cent. of the profits made by the branches of the Exchange Banks in India a prior charge should be given for the purpose of meeting the claims of the industry. The provisions of section 17 of the Banking Companies Act, 1949, are not applicable to Exchange Banks, and they are under no obligation to transfer any part of the profit made by their branches in India to the reserve fund. The convention sought to be established by the Reserve Bank whereunder 20 per cent. of the profits have to be set apart until the paid-up capital and published reserves reach the limit of at least six per cent. of the total deposits, is also not applicable to Exchange Banks. As reserves of these institutions are kept with their head offices, the Reserve Bank by its letter dated 17th June 1961 had proposed to prescribe a flexible formula linking the capital to their deposits. It proposed to prescribe "(a) minimum ratio of their capital [*viz.*, cash or Government securities maintained with the Reserve Bank under section 11(2) of the Banking Companies Act] to deposits

at 5 per cent. or a minimum capital of Rs. 15 lakhs, whichever is higher, if they operate in centres other than in Bombay or Calcutta, or (b) the minimum ratio of capital to deposits of 5 per cent. or Rs. 20 lakhs, whichever is higher, if they operate in either Bombay or Calcutta." It further stated that approved securities lodged with the Reserve Bank under section 11(2) of the Banking Companies Act would continue to count as part of liquid assets under section 24 of the Act. Shri Palkhiwala contended that even though the provisions of section 17 and the provisions of the convention are not applicable to Exchange Banks, they should be put on par with other banks by providing that 20 per cent. of the Indian profits should be set apart as a prior charge. The result of acceding to this request would be that even though Indian banks would not be entitled to claim by way of prior charge 20 per cent. of the profits where the reserves together with moneys standing to the credit of the share premium account had equalled the paid-up capital and where the paid-up capital together with the published reserves had reached the limit of six per cent. of the total deposits, the Exchange Banks would be entitled for all times to claim 20 per cent. of profits as a prior charge. There is no reason why any such prior charge should be permitted. No doubt, when dealing with the question of available surplus, the fact that 20 per cent. of the profits have not been treated as a prior charge in the case of Exchange Banks will be a circumstance to be taken into account while distributing the available surplus. Shri Palkhiwala next contended that in the profit and loss account of the Exchange Banks under the heading "Income less provision made during the year for bad and doubtful debts and other usual and necessary expenses", the Exchange Banks show income after making provision only for bad and doubtful debts and do not provide for any amount under the head "usual or necessary provision" and that the profits disclosed by them are commercial profits. Shri Palkhiwala, however, conceded that as regards the provision for taxation the position of the Exchange Banks was the same as that of Indian banks. Shri Palkhiwala urged that the Exchange Banks should be compensated for the same. Any relevant circumstance established by any Exchange Bank which would distinguish it from Indian banks will have to be taken into account whilst distributing the available surplus. In the case of Exchange Banks the general observation made that in the case of a large number of banks labour will be the claimant for the major share in the available surplus will not apply. The same is not intended to be made in the case of the Exchange Banks. One cannot predicate and say what the share of labour will be in the available surplus in the case of Exchange Banks in any given year.

Qualifications for eligibility and other matters

115. The All India Bank Employees Association has pleaded that the qualification for eligibility should be that the person receiving bonus should be a workman who has worked during the whole or a part of the year for which bonus is to be paid. The All India Bank Employees Federation has submitted that officers and/or non-workmen getting basic salary above Rs. 650 per month should not be paid any bonus. It has further submitted that bonus should be proportionate to the earnings of workmen for the year in question irrespective of the fact whether they are in the service of the bank at the time of payment or not and that bonus should be paid unconditionally. The Punjab National Bank Staff Association, Eastern Circle, Calcutta has pleaded that anybody who has worked in the bank in any capacity for any period under any condition will be entitled to bonus and that persons who are eligible for bonus but who are not in service of the bank should be paid bonus on their submitting claims in writing to the bank. It has further pleaded that an employee whose services may have been discharged or may have been dismissed for misconduct shall also get bonus with the proviso that if an employee has defrauded or caused damage or loss to the bank any claim which the bank can legally have against him should be set off against any claims (including a claim to bonus) which the dismissed employee may have against the bank.

116. The Indian Banks Association has submitted that officers and/or non-workmen are not within the purview of the reference and that the Tribunal has no jurisdiction to give any directions with regard to them. It has submitted that a very large bulk of the profits of a banking company are due to the efforts, skill and integrity of officers and/or non-workmen and to deprive them of bonus, wherever admissible, would be unjust to such employees and not in the best interests of the banking industry. It has further submitted that the minimum qualification or condition for payment of bonus should be a minimum service of six months by the workmen during the period for which the bonus is declared. By the written statement dated 15th December 1961, it has submitted that the rules relating to eligibility laid down in para 363 of the Sastry Award should be the governing

rules. Shri Phadke on behalf of the Indian Banks Association at the hearing suggested that bonus should be paid on a percentage basis, *i.e.*, it should be a particular percentage of the yearly basic pay plus special allowance less overtime allowance. The Bombay Exchange Banks Association has submitted that it is not open to an Industrial Tribunal to lay down what should and what should not be paid to non-workmen and that in actual fact, contribution to the earning of profits is really made by the management staff. By its written statement dated 11th December 1961, it has submitted that no workman should be eligible for bonus if he has not worked for the whole of the period for which bonus is paid.

117. The Sastry Tribunal, in connection with rules relating to eligibility, has in paragraph 363 of its award observed as under:—

"(1) For eligibility to bonus there should be no rule insisting on a minimum period of service for an employee during the year for which bonus is declared.

(2) An employee will be eligible for bonus even if he is not in service on the date when bonus is declared. In such cases bonus amount should be paid either to him, or to his heirs if he should have died earlier, provided a claim in writing is submitted to the bank within a period of one year after such declaration of bonus.

(3) Bonus shall be calculated on the pay earned, *i.e.*, on the aggregate of the basic pay, special allowance, if any, and officiating allowance, if any, earned during the calendar year for which bonus is declared.

(4) Bonus should be paid in one or two instalments in a year and within two months from the date on which the dividend is declared or application is received in terms of clause (2) whichever is later.

(5) Deprivation of bonus is not to be a form of punishment.

(6) An employee who is dismissed for misconduct should not be made to forfeit his bonus but where financial loss is caused to the bank by such misconduct the bonus of the employee may be withheld to that extent.

(7) All whole-time employees should be paid bonus *pro-rata* for the period of their service in the year in question. Part-time employees should be paid fifty per cent. of the bonus amount calculated on period of service *pro-rata*. Period of service means the total number of days worked by the employee plus authorised holidays and leave with full pay divided by the number of days in the year. *Pro-rata* calculation will be on this basis and the total pay earned by the workmen in the year.

* * * *

(9) The Summary of the Five Year Plan states (page 120) that the payment of bonuses in cash should be restricted and the balance added to the workers' savings. We made a similar suggestion during argument but neither side welcomed it. It was stated that an experiment on similar lines made some years back in connection with bonuses paid to the textile workers in Bombay proved to be a failure. In view, however, of the weighty recommendation of the Planning Commission we think the principle should be recognised and a beginning made. We direct that in the case of the clerical staff at Bombay, Calcutta, Delhi, Ahmedabad and Madras any amount payable as bonus in excess of two months' basic pay should be paid in the form of National Savings Certificates or Treasury Bonds or added to the provident fund account of the workmen (without, of course, any equal contribution from the bank)."

In dealing with the question whether the claims of both workmen and officers for bonus should rank *pari passu* or whether the workmen should have either a prior claim or claim to a larger amount than officers, the Sastry Tribunal observed as follows:—

".....In the case of workmen bonus is really intended to cover partly at least the gap between living wage and actual wage. In the case of officers it is more an incentive for greater efficiency. Profits depend to a large extent upon the exercise of the intelligence and capacity and brain power of the officer staff. In the matter of bonus, therefore, we do not think a difference can be made between them as each group has a special argument in its favour except perhaps as regards the fixing of a ceiling limit for bonus."

118. Shri Dudhia contended that as between workmen and non-workmen, the need of the workmen was greater. I see no reason to differ from the remarks of

the Sastry Tribunal relating to the contribution of non-workmen to the profits of a banking company, or with the remarks of the Sastry Tribunal when it observed that bonus is intended to cover partly at least the gap between the living wage and the actual wage in the case of workmen and in the case of officers it is more an incentive for greater efficiency. I have no jurisdiction to give any directions to banks as regards what they should pay by way of bonus to non-workmen. For the purpose, however, of calculating the bonus payable to workmen, the tribunal in each case, dealing with the matter will have to consider the provision for non-workmen.

119. There should be no rule laying down any minimum period of service during the year for which bonus is declared before a workman becomes eligible for bonus, and I direct accordingly. An employee will be eligible for bonus even if he is not in the actual service of the bank concerned on the date when bonus is declared. In such cases, bonus amount should be paid either to him or to his legal representatives if he should have died earlier, provided a claim in writing is submitted to the bank within a period of one year from the date of the declaration of bonus. I further direct that an employee who is dismissed for misconduct should not by reason thereof alone be ineligible for bonus. Where, however, financial loss is caused to the bank by reason of such misconduct, the employee would be entitled to claim bonus only to the extent of the difference between the amount of bonus which would otherwise have become payable to him and the amount of loss caused to the bank as aforesaid. In the event of the amount of loss being equal to or in excess of the amount of such bonus, no amount would become payable by way of bonus. Apprentices will not be entitled to claim any bonus. All other workmen will be entitled to claim bonus. Bonus to workmen should be paid on a percentage basis, that is to say, a particular percentage of the basic pay plus special allowance, if any, plus officiating allowance, if any, exclusive of overtime allowance earned during the year for which bonus is declared.

Costs

120. Applications have been made on behalf of the All India Bank Employees Association, the All India Bank Employees Federation, the Vadodra Rajya Bank Nokar Sangh and the Indian Overseas Bank Employees Union, for payment of costs incurred by them in connection with this reference. Costs in connection with the reference have been incurred by both the sides. In this reference I am not dealing with a claim for actual amount of bonus for any particular year. There are a number of points urged by both sides on which they have lost. Taking everything into account, in my view, the fair order to make would be that there will be no order as to costs and I direct accordingly.

Dated 21st July, 1962.

KANTILAL T. DESAI,
Presiding Officer,
National Industrial Tribunal,
(Bank Disputes).

APPENDIX "A"

REFERENCE NO. 3 OF 1960

GOVERNMENT OF INDIA

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 22nd September, 1960

ORDER

S. O. 2384.—Whereas the Central Government is of opinion that an industrial dispute exists or is apprehended between the banking companies specified in Schedule I hereto annexed and their workmen in respect of the matters specified in Schedule II hereto annexed and that the dispute involves a question of national importance and also is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute ;

AND whereas the Central Government is of opinion that the dispute should be adjudicated by a National Tribunal ;

NOW, therefore, in exercise of the powers conferred by Sub-section (1A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute to the National Tribunal constituted by the notification of the Government of India in the Ministry of Labour and Employment No. S.O. 704, dated the 21st March, 1960 for adjudication.

SCHEDULE I

1. Allahabad Bank Limited.
2. Ambat Bank Limited.
3. American Express Company Inc.
4. Andhra Bank Limited.
5. Bank of Baroda Limited.
6. Bank of Behar Limited.
7. Bank of China.
8. Bank of India Limited.
9. Bank of Nagpur Limited.
10. Bank of Maharashtra Limited.
11. Bank of Rajasthan Limited.
12. Bank of Tokyo Limited.
13. Belgaum Bank Limited.
14. Bharatha Lakshmi Bank Limited.
15. Canara Bank Limited.

16. Canara Banking Corporation Limited.
17. Canara Industrial and Banking Syndicate Limited.
18. Catholic Syrian Bank Limited.
19. Central Bank of India Limited.
20. Chaldean Syrian Bank Limited.
21. Chartered Bank.
22. Cochin Commercial Bank Limited.
23. Comptoir National D'Escompte de Paris.
24. Devkaran Nanji Banking Co. Limited.
25. Eastern Bank Limited.
26. First National City Bank of New York.
27. Gadodia Bank Limited.
28. Ganesh Bank of Kurundwad Limited.
29. Hindustan Commercial Bank Limited.
30. Hindustan Mercantile Bank Limited.
31. Hongkong and Shanghai Banking Corporation.
32. Indian Bank Limited.
33. Indian Insurance and Banking Corporation Limited.
34. Indo Commercial Bank Limited.
35. Indian Overseas Bank Limited.
36. Jaya Laxmi Bank Limited.
37. Jodhpur Commercial Bank Limited.
38. Karnatak Bank Limited.
39. Lakshmi Commercial Bank Limited.
40. Lloyds Bank Limited.
41. Martandam Commercial Bank Limited.
42. Mercantile Bank Limited.
43. Miraj State Bank Limited.
44. Nadar Mercantile Bank Limited.
45. Narang Bank of India Limited.
46. National Bank of Lahore Limited.
47. National and Grindlays Bank Limited.
48. Nedungadi Bank Limited.
49. Netherlands Trading Society.
50. New Bank of India Limited.
51. New Citizen Bank of India Limited
52. Oriental Bank of Commerce Limited.
53. Pandyan Bank Limited.
54. Pangal Nayak Bank Limited.
55. Punjab Co-operative Bank Limited

56. Punjab and Kashmir Bank Limited.
57. Punjab National Bank Limited.
58. Punjab and Sind Bank Limited.
59. Rayalseema Bank Limited.
60. Safe Bank Limited.
61. Salem Bank Limited.
62. Sangli Bank Limited.
63. South Indian Bank Limited.
64. Thomcos Bank Limited.
65. Travancore Forward Bank Limited.
66. Trivandrum Permanent Bank Limited.
67. Union Bank of Bijapur and Sholapur.
68. Union Bank of India Limited.
69. United Bank of India Limited.
70. United Commercial Bank Limited.
71. United Industrial Bank Limited.
72. Vijaya Bank Limited.
73. Vysya Bank Limited.

SCHEDULE II

Bonus—Principle and conditions under which payable, qualification for eligibility and method of computation after making provision for all matters for which provision is necessary by or under any of the Acts applicable to the banks or which are usually provided for by banks.

(Sd.) S. N. TULSIANI,
Under Secretary.
[10(96)/59-LR.II.]

APPENDIX "B"

LIST OF APPEARANCES

For Workmen

1. Shri K. T. Sule, Advocate for the All India Bank Employees Association.
2. Shri C. L. Dudhia, Advocate for the All India Bank Employees Federation, the Surat Bank Employes Union, the Vadodra Rajya Bank Nokar Sangh and the Indian Overseas Bank Employees Union.
3. Shri H. K. Sowani, Advocate for the All India Bank of Baroda Employees Federation.

For Banks

1. Sarvashree N. V. Phadke, K. H. Bhabha and J. P. Thacker, instructed by Messrs. Mulla and Mulla and Cragie Blunt and Caroe, Solicitors for the Indian Banks' Association, representing 27 member banks.

2. Shri N. A. Palkhiwalla, instructed by Shri R. Setlur of Messrs. Crawford Bayley and Co., Solicitors for the Bombay Exchange Banks' Association, representing 10 member banks.

3. Sarvashree N. K. Patigara and J. P. Thacker of Messrs. Mulla and Mulla and Cragie Blunt and Caroe, Solicitors for the Miraj State Bank Ltd.

4. Shri S. P. Sawney for the National Bank of Lahore Ltd., the New Bank of India Ltd., the Laxmi Commercial Bank Ltd. and the Oriental Bank of Commerce Ltd.

No appearance for the following Banks (Notice served) :—

1. Ambat Bank Ltd.
2. Bank of Nagpur Ltd.
3. The Bank of Tokyo.
4. Bharatha Lakshmi Bank Ltd.
5. Catholic Syrian Bank Ltd.
6. Chaldean Syrian Bank Ltd.
7. Cochin Commercial Bank Ltd.
8. Gadodia Bank Ltd.
9. Ganesh Bank of Kurundwad Ltd.
10. Indo Commercial Bank Ltd.
11. Indian Insurance and Banking Corporation Ltd.
12. Jaya Laxmi Bank Ltd.
13. Lloyds Bank Ltd.
14. Martandam Commercial Bank Ltd.
15. Nadar Mercantile Bank Ltd.
16. Narang Bank of India Ltd.
17. New Citizen Bank of India Ltd.
18. Pandyan Bank Ltd.
19. Pangal Nayak Bank Ltd.
20. Punjab Co-Operative Bank Ltd.
21. Punjab and Kashmir Bank Ltd.

22. Punjab and Sind Bank Ltd.

23. Rayalseema Bank Ltd.

24. Safe Bank Ltd.

25. Salem Bank Ltd.

26. South Indian Bank Ltd.

27. Thomcos Bank Ltd.

28. Travancore Forward Bank Ltd.

29. Trivandrum Permanent Bank Ltd.

30. Union Bank of Bijapur and Sholapur.

31. Vijaya Bank Ltd.

[No. 56(9)/62-LRIV]

P. M. MENON, Secy.

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